

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8911 of 2017

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Lakhan Singh son of late Firangi Singh, resident of village - Dahariyabigha, P.S. Bodhgaya, District - Gaya.

.... Petitioner

Versus

1. The State of Bihar through Principal Secretary Urban Development Department, Govt. of Bihar, Patna.
2. Executive Officer, Nagar Panchayat Bodhgaya, Gaya.
3. Sri Suresh Singh, son of Parasnath Singh, resident of Mohalla - Sidhiyaghat, P.S. - Bodhgaya, District - Gaya.

.... Respondents

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Appearance :

For the Petitioner : Mr. Amar Nath Singh, Sr. Advocate
Mr. Bibhuti Narayan, Advocate
For the State : Mr. Avinash Shekhar, AC to SC 6
For Respondent No.2 : Mr. Ashok Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 22-12-2017

The present writ petition has been filed for the following
reliefs —

“(i) For quashing the order contained in memo no. 2003 dated 31.12.2016 issued by respondent no. 2 whereby and whereunder the shop no. 114 situated in front of Thai Temple Bodhgaya allotted to the petitioner in the year 1999 has been cancelled.

(ii) For quashing the allotment of the shop no. 114 made in favour of respondent no. 3 which has illegally been made in violation of procedure prescribed under law for allotment of shop to any person.

(iii) For grant of stay of order impugned till disposal of the writ petition.

(iv) Any other relief/reliefs which this Hon’ble Court may deem fit and proper.”



2. Learned counsel for the petitioner submits that the cancellation of allotment of the shop of the petitioner is arbitrary and illegal and without following the principles of natural justice. The agreement between the parties (Annexure-1) thus contemplated vide Clause 15 hereof that the cancellation could be made pursuant to a show cause notice. In the instant case, however, no show cause notice whatsoever was served upon the petitioner prior to passing of the impugned order of cancellation and he only came to know about the cancellation order through newspaper published on 12.03.2017. It is stated that the alleged violation of Clause 7 of the agreement with regard to sale of the shop by the petitioner to a third party has not been supported by any material nor the petitioner confronted in this regard. It is further submitted that the concerned shop has since been allotted in favour of the respondent no. 3 who happens to be none other than the husband of the Chairman of the Nagar Panchayat, Bodhgaya.

3. Learned counsel for the respondent-Nagar Panchayat appears and has been heard. He relies on the counter affidavit to submit that the petitioner had sold the shop to the respondent no. 3 and hence violated Clause 7 of the agreement attracting the cancellation of the shop.

4. Despite appearance having been entered on behalf of the respondent no. 3 and an opportunity having been granted for filing



counter affidavit by order dated 11.08.2017, however, neither respondent no. 3 is represented when the matter is called nor any counter affidavit has been filed on his behalf.

5. Having heard learned counsel for the parties and on careful consideration of the materials available on record, this Court finds merit in the writ petition. The agreement itself contemplated a show cause notice to be issued prior to cancellation of allotment of the shop which has, in the present case, clearly not been issued. A general public notice cannot be said to be sufficient compliance of the principles of natural justice in such a case more so when specific nature of the allegation has also not been made known to the petitioner nor any materials were made available to the petitioner to enable him to furnish a suitable reply in that regard. The respondents have not brought any material on record even before this Court to show that the petitioner had sold the shop to respondent no. 3. This Court is therefore of the view that the allotment of the shop of the petitioner has been cancelled in violation of the principles of natural justice and cannot be sustained. The impugned order contained in Memo No. 2003 dated 31.12.2016 (Annexure-4) is accordingly quashed. However, the respondents shall be at liberty to take fresh steps for cancellation of allotment of shop, if so advised, after issuance of proper show cause notice to the petitioner, in accordance law.

6. The writ petition stands allowed as above.



B.T/Chandran

(Vikash Jain, J)

AFR/NAFR	NAFR
CAV DATE	N.A.
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Transmission Date	N.A.

