

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.513 of 2016
IN
Civil Writ Jurisdiction Case No. 18262 of 2013**

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Akhilesh Kumar Singh, S/o Late Basudeo Prasad, Resident of Village + P.O. -
Amwan, Bodh Gaya, Gaya, Bihar.

.... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Youth, Art and Culture Department, Government of Bihar, Vikas Bhawan, Bailey Road, Patna - 1.
2. The Commissioner, Magadh Division, Gaya.
3. The District Magistrate, Gaya Collectorate, Gaya.
4. The Sub Divisional Officer, Sadar Gaya.
5. The Bodh Gaya Temple Management Committee through its Chairman, P.O. - Box-2, Bodh Gaya, Gaya - 824231, Bihar.
6. The Chairman, Bodh Gaya Temple Management Committee, P.O. - Box-2, Bodh Gaya, Gaya - 824231, Bihar.
7. The Secretary, Bodh Gaya Temple Management Committee, P.O. - Box - 2, Bodh Gaya, Gaya - 824231, Bihar.
8. The Nagar Panchayat, Bodh Gaya, through its Executive Officer, Bodh Gaya, Gaya.
9. The Executive Officer, Nagar Panchayat, Bodh Gaya, Gaya.
10. The Officer-In-Charge, Bodh Gaya, Police Station, Bodh Gaya, Gaya, Bihar, Gaya.
11. The Circle Officer, Bodh Gaya, Gaya, Bihar.
12. Abdul Razaque @ Md. Ayub S/o Late Amir Ali Resident of Village - Pachhatti, P.O. + P.S. - Bodh Gaya, Distt - Gaya, Bihar.
13. Manoj Kumar S/o Shri Kaleshwar Singh Resident of Village - Pachhatti, P.O. + P.S. - Bodh Gaya, Distt - Gaya, Bihar.
14. Lobsang Yeshi Artasha S/o Dr. Tulku Artasha Resident of Village - Mastipur, P.O. + P.S. - Bodh Gaya, Distt - Gaya, Bihar.
15. Prafull Chand Rai, S/o Late Ranjit Rai, Resident of Village - Pachhatti, P.O. + P.S. - Bodh Gaya, Distt - Gaya, Bihar.
16. Jai Singh S/o Late Munni Singh Resident of Village - Dahariya Bigha, P.O. + P.S. - Bodh Gaya, Distt - Gaya, Bihar.
17. Ram Deo Prasad S/o Late Kuleshwar Mahto Resident of Village - Bhochari, P.O. + P.S. - Bodh Gaya, Distt - Gaya, Bihar.
18. Subhash Prasad S/o Late Munni Lal Resident of Village - Bhochari, P.O. + P.S. - Bodh Gaya, Distt - Gaya, Bihar.
19. Shakila Khatoon W/o Md. Hasimul Haque Resident of Village - Narkatiya, P.O. + P.S. - Bodh Gaya, Distt - Gaya, Bihar.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Dhananjay Kumar Tiwary
For the Respondent/s : Mr. AAG2-D.K. SINHA

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**CORAM: HONOURABLE THE CHIEF JUSTICE
and**



HONOURABLE MR. JUSTICE SUDHIR SINGH
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)
Date: 06-04-2017

Seeking exception to an order dated 30th of January, 2016, passed by the writ Court in C.W.J.C. No.18262 of 2013, this Appeal has been filed under Clause 10 of the Letters Patent.

2. Facts, in brief, go to show that in the Mahabodhi Temple, Both Gaya, which has been declared as a World Heritage Site by the UNESCO and which is within the ambit of the statutory provision, namely, The Bodh Gaya Temple Act, 1949, a Management Committee looks after the affairs of the temple and the said Committee is known as the 'Bodh Gaya Temple Management Committee' and the District Magistrate of the District is the *ex officio* Chairman of the Committee. Lease agreements were entered into between the Committee and persons like the appellants for establishment of kiosks and temporary shops on payment of periodical rent. Annexure-A filed along with the writ petition are copies of the lease agreement executed in this regard. It was only a lease granted for periods of 11 year with a stipulation for renewal of the licence or lease from time to time.

3. Be that as it may, it is an admitted position that when the cause of action for filing of the petition accrued in the year 2013, the lease had expired and there was no renewal of the lease.



However, it is the case of the petitioners that if after expiry of the period the premises were not vacated, they were still in possession and rent was collected from them. On the own showing in the writ petition goes to show that after the lease expired in August, 2000, there was no renewal of the lease since the year 2001. Be that as it may, when things were so standing, on 7.7.2013 in the morning the temple became the target of a terrorist attack and a series of bomb blasts took place in the vicinity of the Temple. Action was taken thereafter and, as a measure of security arrangement for the temple, a world heritage, and an important pilgrimage centre for the Buddhists, action was taken for removal of all the kiosks and shops within the vicinity and, contending that the petitioner's right to carry out their business and establishment in the lease granted, is being taken away forcefully. Their fundamental right under Article 19(1)(g) and 21 of the Constitution has been taken away. They are not encroachers. They were put to the cite based on lease agreement granted which was in existence up to the year 2001 and they have been unauthorizedly removed from the area in question, the writ petition was filed.

4. The writ Court took note of various aspects of the matter, the detailed affidavits and various other material produced and came to the conclusion that the lease or agreement, based on which possession was granted to the petitioners, was taken away.



Thereafter the petitioners are unauthorized occupants and they have been removed based on various considerations, which include security consideration in the area, and, therefore, refused to interfere into the merit.

5. Learned counsel for the petitioner took us through the following judgments:

1. Bishan Das & Ors. v. State of Punjab & Ors., AIR 1961 SC 1570;
2. M/s. Hindustan Petroleum Corporation Ltd. V. The State of Bihar & Ors., 1996(2) PLJR 621
3. Ranchi Bar Association & Anr. vs. State of Bihar & Ors., 1999 (1) PLJR 922 (DB)
4. M/s. Maa Durga Enterprises v. The State of Bihar & Ors., 2009(2) PLJR 1000
5. Dharmendra Kr. Yadav v. The State of Bihar & Ors., 2010(1) PLJR 681
6. Naintara Sharma & Anr. v. The State of Bihar & Ors., 2011(3) PLJR 268
7. Drikung Charitable Society v. The State of Bihar & Ors., 2012(1) PLJR 550
8. Ritesh Tiwari v. State of U.P., (2010) 10 SCC 677
9. Municipal Corporation of Delhi, Delhi v. Uphaar Tragedy Victims Association & Ors., (2011) 14 SCC 481
10. Shishir Kr. Jain vs. PRDA & Ors., 2008(1) PLJR 707 (DB)
11. Uday Singh v. State of Bihar, 2012(1) PLJR 58

6. With the help of aforesaid judgments, learned Counsel tried to argue that the State and its officers cannot act in an



arbitrary and illegal manner. The petitioners were neither trespassers nor encroachers. They were duly and authorizedly put into possession on the basis of valid lease agreement. They were paying the rent and without paying compensation to them and without granting them adequate rehabilitation package, the action taken is unsustainable.

7. We have heard learned counsel for the parties at length and we are of the considered view that the judgments relied upon by the learned counsel will not apply in the facts and circumstances of the present case. Admittedly, petitioners were put into place by virtue of a lease agreement and the lease agreement, according to petitioners' own showing, came to an end in the year 2001. Thereafter, even if rent was accepted from them, it does not mean that they have acquired the right of title over the property. They were at best, licence holders to the property and if, taking note of the security concern which resulted as a consequence of the terrorist attack in the area and on there consideration exercising administrative discretion, if it was decided to remove all such temporary structures from the temple premises, with a view to maintain not only the sanctity of the International Heritage Cite, but also to address the security concern, we see no error in the order passed by the learned writ Court warranting interference. The licence of the petitioners or the lease agreement having expired in



August, 2000, thereafter, petitioners have no right to seek a Mandamus for continuing in the area even thereafter. The writ Court, in the peculiar facts and circumstances of the case, has not committed any error in refusing to interfere into the matter. In case the petitioners feel that they have been dispossessed in an illegal manner because of which they are entitled for compensation for the damages caused to them, remedy under common law is available to them of claiming the compensation. Exercising the extra ordinary jurisdiction in a petition under Article 226 of the Constitution, the learned Writ Court has not committed any error in refusing to interfere into the matter.

8. Accordingly, finding no ground to interfere, the petition stands dismissed.

(Rajendra Menon, CJ)

(Sudhir Singh, J)

K.C.jha/-

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