

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1189 of 2016

In
Civil Writ Jurisdiction Case No.17182 of 2013

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1. The Chairman, Motihari Municipality, now as Nagar Parishad, Motihari, District- East Champaran
 2. The Motihari Nagar Parishad through the Executive Officer, Motihari
 3. The Executive Officer, Motihari Nagar Parishad, Motihari, East Champaran
 4. Binod Kumar, son of Late Badri Sah, Resident of Naya Tola, Banjariya Pandanl, Motihari, East Champaran
 5. Akshay Lall Kanjuria Resident of village + P.O.- Siswa, P.S.- Banjariya, District- East Champaran
 6. Binod Kumar son of Late Jiyut Prasad, Resident of Thakurbari, Motihari, East Champaran
 7. Raj Kumar Gupta son of Late Ragho Sah, Resident of Teliyapatti, Motihari, District- East Champaran
 8. Chandan Kumar son of Lal Babu Sah, Resident of Teliyapatti, Motihari, District- East Champaran
 9. Sunil Kumar son of Kanhaya Prasad, Resident of Teliyapatti, Motihari, District- East Champaran
 10. Prabhu Prasad son of Late Kasi Sah, Resident of Teliyapatti, Motihari, District- East Champaran
 11. Shambhu Prasad son of Late Sukhari Sah, Resident of Teliyapatti, Motihari, District- East Champaran
 12. Madan Prasad son of Baidyanath Prasad, Resident of Henri Bazar Chowk, Motihari, District- East Champaran
 13. Anil Kumar, son of Ramchandra Sah, Resident of Teliyapatti, Motihari, District- East Champaran
 14. Chandan Kumar son of Lal Babu Sah, Resident of Teliyapatti, Motihari, District- East Champaran
 15. Raj Kumar Kedia S/o Late Baidyanath Kedia, Resident of Mohalla- Henri Bazar, P.S. & Town Motihari, District- East Champaran

... .. Appellant/s

Versus

1. The State of Bihar through the Secretary, Department of Urban Development, Bihar, Patna
2. The District Magistrate, East Champaran at Motihari
3. The Circle Officer, Motihari, East Champaran
4. Binod Kumar son of Late Badri Sah, Resident of Naya Tola, Banjariya Pandanl, Motihari, East Champaran
5. Akshay Lall Kanjuria, S/o Gauri Kanjuria, Resident of Village + P.O. - Siswa, P.S. - Banjariya, District – East Champaran
6. Binod Kumar Son of Late Jiyut Prasad, Resident of Thakurbari, Motihari, East Champaran
7. Raj Kumar Gupta, Son of Late Ragho Sah, Resident of Teliyapatti, Motihari, District – East Champaran



8. Chandan Kumar Son of Lal Babu Sah, Resident of Teliyapatti, Motihari, District – East Champaran
9. Sunil Kumar Son of Kanhaya Prasad, Resident of Teliyapatti, Motihari, District – East Champaran
10. Prabhu Prasad Son of Late Kasi Sah, Resident of Teliyapatti, Motihari , District – East Champaran
11. Shambhu Prasad Son of Late Sukhari Sah, Resident of Teliyapatti, Motihari, District – East Champaran
12. Madan Prasad Son of Baidyanath Prasad, Resident of Henri Bazar Chowk, Motihari, District – East Champaran
13. Anil Kumar Son of Ramchandra Sah, Resident of Teliyapatti, Motihari, District – East Champaran
14. Rajan Prasad, Son of Giriya Sah, Resident of Teliyapatti, P.S. - Motihari, District – East Champaran
15. Raj Kumar Kedia, S/o Late Baidyanath Kedia, resident of Mohalla – Henri Bazar, P.S. & Town – Motihari, District – East Champaran

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Raghwanand
Advocate
For the Respondent/s : Mr. Sanjay Singh
Advocate
Mr. Rajesh Mohan
Advocate

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date : 05-12-2017

Heard learned counsel for the parties.

A statutory or a constitutional body, like Nagar Parishad, cannot be expected to behave worse than an ordinary litigant, but that is the way they seem to have behave in the present litigation. Their endeavour to assail the order of the Learned Single Judge, dated 27.01.2016 in this intra-court appeal is also a reflection or manifestation of the same mind set.



The litigation started when the Municipality tried to terminate the settlement made in favour of father of the respective petitioners. This settlement was made in the early decade of 1950 on due exchange of considerations. There was an auction sale for a period of 99 years and in that auction sale, the Settlement Committee had made settlement in favour of the respective parents. After their death an effort was made to oust them on the ground that there was nothing registered or executed by way of a deed, which can create a right in their favour.

The Learned Single Judge has taken note of all the submissions as well as the principles of law with regard to the status of such settlees and has rightly concluded in following terms:

“Considering the issue at hand in the backdrop of the law so well settled, it would be an absurdity to accept anything but, that the Municipality has consciously entered into a settlement with the father of the petitioners and the nature and character of the transaction so entered in between the parties is confirmed from the continuation of the possession of these petitioners over the respective plots settled with them for now 60 years coupled with the creation of holdings and acceptance of rent by the Municipality. In the circumstances where the Municipality being a party to the settlement did not choose to create a register instrument for the



purpose, it does not lie in their mouth to question the settlement on the anvil of its non-registration more particularly where the agreement has been given effect to and has continued now for more than 60 years. Clearly the attempt of the Municipality to create repeated obstructions in the way of the writ petitioners to enjoy the fruit of the settlement, each time raising different objections is a clear case of arbitrary and abusive exercise of statutory power by the Municipality. Even when this Court in its order passed in C.W.J.C. No. 5898 of 2012 clearly restrained the Municipality from disturbing the possession of the petitioners until such time that the settlement is terminated by following a due process of law, the Municipality has simply proceeded to cancel the settlement unilaterally on grounds which in the backdrop of the passage of time are unsustainable. That the petitioners have, since after the settlement made on 24.02.1955, continued to be in valid possession of the respective plots and have been discharging their obligation to deposit the annual rental, hence as already directed by this Court in the order passed in C.W.J.C. No. 5898 of 2012, any termination of settlement prior to the expiry of the settlement period can only be by following a due process of law and neither by an executive fiat nor by a unilateral decision of the Empowered Standing Committee of the Municipality.

For the reasons aforementioned, the orders of cancellation of settlement impugned



***at Annexure – 1 and 2 of C.W.J.C. No. 17182
of 2013 and Annexure – 13 and 14 to
C.W.J.C. No. 15286 of 2013 are held illegal
and are accordingly set aside.”***

The rational and reasoning given by the Learned Single Judge in reaching the conclusions, as above, is neither irrational nor illegal, in fact, this was a case, where the cost should have been imposed by the Learned Single Judge by allowing the writ application.

The appeal is dismissed and a cost of Rs. 25,000 /- is imposed upon the Chairman and the Executive Officer, Nagar Parishad, Motihari, District – East Champaran to be payable to Patna High Court Legal Services Committee within a period of four weeks. Such an action on the part of the authority of the Municipality next time will create liability of payment of cost from their personal pocket and not from the exchequer of the State.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

skm/-

AFR/NAFR	N.A.F.R.
CAV DATE	
Uploading Date	06.12.2017
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