

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 319 of 2017

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Bhola Nath @ Bhola Nath Gupta, Son of Late Muneshwar Sao, Resident of
Mohalla Alamganj, P.O. Biharsharif, P.S. Laheri, District – Nalanda.

.... Petitioner/s

Versus

1. The Biharsharif Municipal Corporation, Nalanda at Biharsharif.
2. The Nagar Aayukt-cum-Special Officer of Nagar Nigam, Biharsharif.
3. The Mayor, Biharsharif Nagar Nigam, Biharsharif, Nalanda.
4. The State of Bihar through the Superintendent of Police, Nalanda, Biharsharif.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Amar Nath Singh, Advocate
For the Municipal Corporation : Mr. Gyan Prakash Ojha, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 17-08-2017

Heard learned counsel for the petitioner and the
respondents.

2. Pursuant to order dated 11.08.2017, the respondent no.
2 is also present in Court. Though, respondent no. 4 i.e., the
Superintendent of Police, Nalanda was not directed to appear but he
is also present in Court.

3. The petitioner has moved the Court for the following
reliefs:

*“ (a) For quashing of the decision
dated 31.05.2016 (Annexure-19)
communicated to the petitioner vide letter no.
4844 dated 16.09.2016 (Annexure-20) under
the signature of the Respondent Nagar Ayukt
Nagar Nigam Biharsharif, Nalanda as being
wholly illegal and without jurisdiction.*

*(b) For direction for the Respondent
to act up on the Agreement dated 10.09.2011*



executed by the Respondent no. 2 & 3 with the petitioner.

(c) For a direction to the respondent restraining them from disturbing the land which has been allotted to the petitioner in terms of the decision dated 06.09.2011 to enable the petitioner to complete construction work.

(d) For any other relief(s) for which the petitioner may legally be found entitled in the facts and circumstances of the present case.”

4. A small area was allotted to the petitioner by the Bihar Sharif Nagar Nigam in the year 2011, for which agreement was also made between the parties but the same was cancelled soon thereafter in the year 2011 itself, which was assailed before this Court in C.W.J.C. No. 21264 of 2011. The writ petition was finally allowed by order dated 25.04.2016, by a co-ordinate Bench of this Court, giving liberty to the respondents to take a fresh decision in the matter in accordance with law and after granting reasonable opportunity to the petitioner of being heard in the matter. An order has been passed, purportedly in terms of the order of the Court dated 25.04.2016, on 31.05.2016, which is under challenge in the present writ application.

5. Learned counsel for the petitioner submitted that in terms of the earlier direction of the Court dated 25.04.2016, the requirement of the petitioner being given a reasonable opportunity of



being heard was not afforded to him for which he filed M.J.C. No. 2946 of 2016 which was disposed off by order dated 07.12.2016, observing that in view of a final decision having been taken by the authorities, the order was complied with, giving liberty to the petitioner that if he is aggrieved by the order of the authorities, he may agitate the same before an appropriate forum in accordance with law. Learned counsel submitted that the order is bad, both in law as well as on facts, for the reason that he was not given any effective opportunity of being heard and the manner in which the same has been done is arbitrary. He drew the attention of the Court to the averments made in paragraphs no. 19 to 25 of the writ petition to indicate the lack of opportunity given to him of being heard and the manner in which even his attendance and written arguments were not accepted by the authorities. He further submitted that in reply to those paragraphs, in the counter affidavit filed on behalf of the respondent no. 2 today, at paragraph no. 19, it has only been stated that such matters have been decided in M.J.C. No. 2946 of 2016.

6. Learned counsel for the respondents no. 1 to 3 submitted that on the last occasion i.e., 11.08.2017, the respondent no. 2 could not be present as he had been transferred on 02.08.2017 and till 09.08.2017, the post was empty and the present incumbent was notified to the post on 09.08.2017 and thus, there was communication



gap due to which neither counter affidavit could be filed nor he could be present in Court, for which apology has been tendered.

7. Coming on merits, he reiterated the stand taken in the counter affidavit and submitted that a detailed and reasoned order has been passed and if the petitioner is aggrieved, he may file a suit against the impugned order.

8. Having considered the rival contentions, without going into the merits of the order on facts, the Court finds that the procedure followed by the respondents in reaching such decision is not legally sustainable. The averments made in paragraphs no. 19 to 25 of the writ petition is quoted hereunder for ready reference:

“19. That on 24.05.2016 at 11 A.M. the petitioner got message from the office of Nagar Nigam that meeting of Shashakt Sthayee Samiti has began and he has to appear Just now. The petitioner was shocked and surprised that he was to appear at 1 P.M. in the light of notice dated 18.05.2016 vide letter no. 3000. In spite of that in hurry, the petitioner went to the office of Nagar Ayukt at 11.20 A.M. and filed Hazari and also made request to hear him at 1 P.M, but it is very unfortunate that Hazari was not received and a date for hearing was fixed on 27.05.2016 saying that the petitioner did not appear in time which shows that unfair and illegal act was done by the Nagar Ayukt, the reason best known to him.

20. That against this unfair play of Nagar Ayukt, the petitioner filed a representation at 1.12 P.M. (Noon) on 24.05.2016 itself before the D.M. Nalanda alleging therein that the officials of Nagar Nigam want to show the petitioner absent for helping someone with a further request that the matter be heard under his supervision.



21. That a copy of representation which was sent to the D.M. Nalanda, was also sent to the Nagar Ayukt through registered post but the office did not receive and it was returned undelivered with notes “ not received”. The petitioner had filed an application on 24.05.2016 before the Nagar Ayukt through registered post to know about the time fixed for hearing on 27.05.2016 but the same was also returned.

22. That memo no. 3040 dated 25.05.2016 issued under the signature of Nagar Ayukt, the petitioner was informed that hearing is fixed at 10.30 A.M. on 27.05.2016 before five men Committee headed by the Mayor Nagar Nigam. But hearing was not done. No Hazari or written submission was accepted in the office of Nagar Nigam on behalf of the petitioner, then it was sent through registered post, but the same was returned undelivered with notes ‘refused’.

23. That it is stated that vide memo no. 3094 dated 28.05.2016 the petitioner was informed that on 31.05.2016 at 1 P.M. matter will be heard before Four men Committee headed by Mayor Nagar Nigam, but hearing was not done and it is very bad to state that the written submission was also not accepted and also refused to receive through registered post, reasons best known to them.

24. That it is respectfully submitted and stated that for the first time vide letter no. 3000 dated 18.05.2016 the petitioner was directed to appear before Shashakt Samiti, vide Memo no. 3010 dated 25.05.2016 he was directed to appear before Five men Committee and lastly vide memo no. 3094 dated 28.05.2016 the petitioner was directed to appear for hearing before four men committee. But hearing was not done. The respondent Nagar Nigam was itself not clear that who will hear the matter.

25. That it is stated that on one hand vide letter No. 2932 dated 14.05.2016 the petitioner was directed for status quo and on the other hand, no Hazari, no petition, no written submission were accepted. Total thirteen registered letters



including 4 R.T.I. letters were refused to receive. Any order is passed which is without hearing the petitioner.”

9. From the above, it is clear that the petitioner was denied a fair hearing, which is writ large from the fact that on the registered documents sent to the respondent no. 2, there is an endorsement of refusal. The Court is hardly required to indicate that all petitions filed or sent either personally or through registered post to any public servant/authority is required to be received by him/her or the office concerned and refusal is impermissible. Be that as it may, even in the counter affidavit, without replying to such averments, the only stand that the same stood covered and decided in the contempt is totally misconceived. In fact, non denial is constructive admission. The Court did not exercise its contempt jurisdiction only for the reason that final order had been passed. The fact that it is a separate cause of action, it is always open to the petitioner to assail the same under writ jurisdiction. Further, the manner and mode in which the decision has been taken is equally open to challenge and from the pleadings and materials on record in the present case, it is clear that the petitioner has been denied a fair and reasonable opportunity of being heard. On such short point of there being denial of a fair and reasonable opportunity of being heard to the petitioner, the order cannot be sustained and is accordingly, set aside. The respondents no. 1 to 3 are



free to take fresh action in the matter, in accordance with law. However, it is made clear that effective and reasonable opportunity shall be given to the petitioner of being heard in an open and transparent manner and thereafter any final and reasoned order shall be passed, in accordance with law.

10. The writ petition stands allowed in the aforementioned terms.

11. The appearance of the officer stands dispensed with.

(Ahsanuddin Amanullah, J.)

P. Kumar

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