

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5956 of 2013

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1. Devanand @ Devanand Gupta S/O Late Anandi Prasad R/O Villge- Chukti,
P.O.- Mansi, P.S.- Mansi, District- Khagaria, Presently Residing At Malgodam
Road, P.S. & Town- Khagaria

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Secretary Urban Development Department, Government Of Bihar, Patna
3. The Collector, District- Khagaria
4. The Nagar Chairman, Nagar Parishad, Khagaria
5. The Town Executive Officer, Nagar Parishad, Khagaria
6. Kismat Ali S/O Salamat Ali R/O Ward No. 11, Nagarpalika Road, Town &
District- Khagaria

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dhirendra Kumar Jha'
Mr. Krishna Chandra Jha, Advocate.
For Respondent/s 1 to 3 : Mr. Kaushal Kumar Jha, AAG-8
Mr. Shanker Kr. Choudhary, AC to AAG 8
For Respondent nos. 4 & 5 : Mr. Rakesh Chandra, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 13-01-2017

Heard the parties.

In the present writ petition, petitioner is challenging the order dated 28.8.2012 passed by the Executive Officer, Nagar Parishad, Khagaria which was communicated to him vide memo no.1831 dated 15.9.2012 by which allotment of Shop No.C-73 of the Nagar Parishad Shop in the name petitioner, situated at Malgodam Road of Khagaria Town has been cancelled.

Petitioner is resident of Khagaria Town and has applied for allotment of shop. In pursuance thereof the Executive Officer,



Khagaria Municipality vide letter no.597 dated 19.10.1989 allotted Shop No.C-73 to the petitioner. As per claim of the petitioner he has paid the amount of the construction. Accordingly shop was constructed and he started his business of Onion and Potato in the aforesaid shop. Claim has been made that petitioner had fallen ill in January, 2012 and sought help of his neighbour, namely, Kismat Ali, son of Salamat Ali and brother of Firoj Alam who are also running shop adjacent to the shop of the petitioner. It has been stated that Kismat Ali, son of Salamat Ali developed an evil eye over the shop of the petitioner, made a complaint before the Executive Officer, Nagar Parishad, Khagaria claiming that he is tenant of Shop No.C-73 by virtue of subletting by the petitioner. In pursuance of the letter the Executive Officer, Nagar Parishad, Khagaria directed for holding enquiry, information was collected and in pursuance thereof he started a proceeding as Record Case no.49 of 2012. accordingly notice was issued to the petitioner vide memo no.851 dated 24.4.2012. In pursuance thereof petitioner filed his show-cause dated 7.5.2012 where he has taken a plea that he had appointed Salamat Ali as his Munsif who developed greedy over the shop and wrongly claimed to be the tenant with evil eye to get the settlement of the shop in favour of his son Kismat Ali.



Kishmat Ali has also filed his show cause. He has stated that as Shop No.C-73 was vacant he has constructed a Jhopri and he started business. If he was evicted would become unemployed youth, request was made for settlement of shop in his favour.

Executive Officer, Nagar Paridhad, Khagaria has considered cases of both sides. During proceeding opposite party submitted sales tax registration in the name of Salamat Ali, permit of transportation in Form No.28B, Pan Card, Report of Weights and Measurement Inspector, electricity bill, report of the Labour Superintendent, Receipt of fee paid to the Bihar Agricultural Board whereas petitioner has submitted receipt depositing rent and claimed that he never defaulted payment of rent to the Municipality and he is an old person having been allotted the shop. The Executive Officer considering the evidence on record and report of enquiry arrived to a finding that petitioner was not doing any business rather he has sub-let the shop to Kismat Ali cancelled the allotment made to the petitioner and also refused to make allotment in favour of Kismat Ali holding that Municipality has already settled the shop to the family members of Kismat Ali.

Learned counsel for the petitioner submits that the order passed by the Executive Officer is not sustainable in view of the



fact that he has based his finding on the basis of enquiry report which was never served upon the petitioner. He has further submitted that the Executive Officer has arrived to a third finding that petitioner has given shop on rent to Salamat Ali, not Kismat Ali. It is deviation of finding what plea has been taken by Kismat Ali.

Learned counsel for the Municipality submits that he has not produced any material to show that petitioner was doing the business at the shop. Merely he has produced the rent receipt. Apart from that there is no material to suggest that he was doing business at the shop.

Having considered the rival contentions of the parties this Court asked the petitioner whether he has any material to show that he was engaged himself in business of Potato and Onion but he has failed to produce the same. Apart from that he has produced rent receipt and he has not produced any material to show that he was doing the business. The shop was allotted not for any other purposes. Even ignoring the finding recorded by the Executive Officer there is no material in favour of the petitioner except the rent receipt for arriving to a finding in his favour that he was doing business. Mere production of rent receipt cannot be said to be sufficient material for such finding.



In such view of the matter, the order passed by the Executive Officer arriving to a finding that petitioner was not engaged in business rather he has sub let the shop, cannot said to be perverse and illegal.

In such view of the matter, this Court does not find any merit in this writ petition. Accordingly it is dismissed.

(Shivaji Pandey, J)

Vinay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.1.2017
Transmission Date	NA

