

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.435 of 2010
IN
Civil Writ Jurisdiction Case No. 2952 of 2010**

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Paban Kumar Jha S/O Shri Rama Kant Jha R/O Vill.- Jandaha, P.S.- Jandaha,
Distt.- Vaishali

.... Appellant/s

Versus

1. The State Of Bihar Through The Chief Secretary Bihar, Patna
2. The Commissioner Cum Secretary Transport Deptt. Bihar, Patna
3. The North Bihar Regional Transport Authority, Muzaffarpur Through It'S
Chairman
4. The Chairman, North Bihar Regional Transport Authority, Muzaffarpur
5. The Secretary, North Bihar Regional Transport Authority, Muzaffarpur
6. The Zila Parishad Through It'S Chairman, Vaishali At Hajipur
7. The Deputy Development Commissioner Cum Chief Executive Officer Vaishali
At Hajipur
8. The Collector Cum District Magistrate, Vaishali At Hajipur

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Navendu Kumar, Advocate
For the State : Mr. G PJha, GP 7
For Respondents 6 & 7 : Mr. Shrinandan Prasad Singh, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 12-09-2017

Seeking exception to an order dated 19.02.2010 passed



by the learned Writ Court in CWJC No. 2952 of 2010 this appeal has been filed under Clause 10 of the Letters Patent.

The facts of the case in nutshell indicates that the petitioner is said to have entered into an agreement on 04.03.1997 with the District Transport Authority, Vaishali for running the Jandaha Bus Stand. As per this agreement, the petitioner was to run the bus stand and 75% of the revenue collected was to give to the petitioner. However, a perusal of the agreement and other documents available on record would goes to show that the land on which the petitioner was to run the bus stand did not belong to the petitioner but belonged to a third person. According to the petitioner this third person had authorized the petitioner to use his land for the purpose of running the bus stand. The parties to the agreement are the petitioner Shri Paban Kumar Jha, the District Authorities of Vaishali and when the dispute arose between the petitioner and the authorities in the matter of execution of the agreement and payment of dues as per the agreement, the matter came to this Court at the instance of the petitioner, i.e. in CWJC No. 5930 of 2005. It was the grievance of the petitioner in the aforesaid writ petition that based on the agreement a license was issued to him to run the bus stand by the authorities of North Bihar Regional Transport Authority, Muzaffarpur and as the District



Administration and Zila Parishad, Vaishali has restrained him from running the bus stand the grievance in this writ petition was that once the petitioner was granted license and it was not cancelled, restraining him from collection of toll from the bus stand in question was not proper. He indicated that he has already submitted a representation to the District Magistrate on 19th March, 2005 and earlier to that on 2nd March, 2005 and as nothing was done a prayer was made in the writ petition that came up for hearing on 17.02.2009 that the representations of the petitioner be directed to be decided. Accordingly, on 17.02.2009 this writ petition was disposed of and the District Magistrate, Vaishali was directed to decide the representations of the petitioner. The petitioner was also granted liberty to file additional representation, if advised. Accordingly, the petitioner submitted a detailed representation on 20.04.2009 vide Annexure-6 in the writ petition, and the District Magistrate having rejected the representation the writ petition in question was filed.

The learned Writ Court finding there a serious dispute with regard to the agreement between the petitioner and the original land owner and the District Administration refused to interfere into the matter.

Before us, a two fold submission was raised. The first



was that once the license was granted to the appellant by the Transporting Authorities under the Motor Vehicle Act, the Collector has no authority for restraining the appellant and rejecting his representation and thereafter directing the toll to be collected and deposited with the Block Development Authority. We find this objection to be wholly misconceived. It was at the instance of the appellant that on 17.02.2009 in CWJC NO. 5930 of 2005 that this Court directed the Collector and the District Magistrate, Vaishali to take a decision in the matter and once the decision was taken at the instance of the appellant, now the appellant cannot turn around and challenge the jurisdiction of the Collector in deciding the issue in question. The petitioner is bound by his own act of submitting to the jurisdiction of the District Magistrate and cannot challenge it on the ground that the Collector has no authority. That apart, the second aspect was that once there was an agreement and the appellant was prevented from recovering the amount by plying of the bus and when the court of the Collector on 20th July, 1999 restrained the appellant from running the bus stand instead permitted the Zila Parishad to run the bus stand and directed to deposit of the entire amount with the Block Development Officer, 75% of the amount deposited with the Block Development Officer in pursuance to this order should be granted



to the appellant. From this showing of the appellant himself it is clear that after the orders were passed by the Collector on 20th July, 1999 the appellant was not maintaining or running the bus stand instead it was the authorities of Zila Parishad who were maintaining and running the bus stand during most of the period. Once the appellant was not running the bus stand, it is a case where at best the appellant could claim damages for breach of agreement and preventing him from carrying out and taking part in the act as per the agreement and it is because of these reasons that the learned Writ Court has relegated the appellant to recourse to the remedy to file a suit and has refused to interfere into the matter in the writ petition.

One more aspect which is relevant to be taken note of is that the appellant had entered into with the agreement for running the bus stand in the area in question whereas the appellant is not owner of the land. The land where the bus stand was situated, the owner of the land was a third person and there seems to be some dispute in between the appellant and the land owner also with regard to the use of the land in question.

Taking note of all these circumstances, we find that there are serious disputes of fact involved in the matter, the dispute pertains to execution of an agreement and therefore taking note of



all these factors if the learned Writ Court has refused to interfere into the matter, we see no reason to make any indulgence in this appeal.

The appeal is, therefore, dismissed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

mrl

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