

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12103 of 2015

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Anil Kumar Agrawal, S/o Late Bhola Ram Agrawal, Proprietor of M/s A.K. Enterprises, residing at Village and Post Bakhri Bazar, P.S.-Bakhri Bazar, District- Begusarai.

.... Petitioner

Versus

1. The State of Bihar through its Secretary, Urban Development Department, Govt. of Bihar, Patna.
2. The Administrator, Agricultural Produce Marketing Board (Dissolved), Office situated in Pant Bhawan, Bailey Road, Patna.
3. The Sub Divisional Officer Cum Special Officer, Agricultural Produce Marketing Board (Dissolved) at Samastipur.
4. Sri Ajay Kumar Gupta s/o Shri Ram Sagar Gupta, Proprietor of M/s Awatar Enterprises, permanent resident of village- Chak Salem Ward No.13, Post and P.S.- Patori, District- Samastipur.

.... Respondents

with

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Civil Writ Jurisdiction Case No. 14223 of 2013

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M/s Awtar Enterprises, through Its Proprietor Ajay Kumar Gupta Son of Ram Sagar Gupta, Resident of Village- Chak Salem, Ward No. 13, Post + P.S.- Patori, Block- Patori, District- Samastipur (Bihar)

.... Petitioner

Versus

1. The State of Bihar through the Secretary, Urban Development Department, Bihar, Patna.
2. The Sub-Divisional Officer-Cum-Special Officer, Agriculture Produce Market Committee (Dissolved), Samastipur
3. Anil Kumar Agrawal, S/o Late Bhola Ram Agrawal, Proprietor of M/s A.K. Enterprises, residing at Village and Post Bakhri Bazar, P.S.-Bakhri Bazar, District- Begusarai.

.... Respondents

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Appearance :

(In CWJC No.12103 of 2015)

For the Petitioner : Mr. Subodh Kumar Sinha, Advocate

For the Respondents : Mr. Pandey S Sahay, Advocate

(In CWJC No.14223 of 2013)

For the Petitioner : Mr. Suraj Narain Yadav, Advocate

For the Respondents : Mr. Awadhesh Kumar Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 15-11-2017



These two writ petitions have been filed by the respective petitioners, each of them claiming right over Shop No. SG 52 situated in the Agriculture Market Committee (dissolved), Samastipur pursuant to agreements entered into with each of them.

CWJC NO. 12103 of 2015 (“the first writ petition”)

2. Learned counsel for the petitioner invites attention to the agreement dated 22.07.2013 (Annexure-3/2) wherein the Shop No. SG 52 was allotted in his favour for a period of 11 months subject to renewal. It is submitted that despite having deposited the rent for 11 months amounting to Rs. 42,240/- on 24.07.2013, he was not given possession of the same and till date, the key to the shop has yet to be handed over to him. He came to learn that the shop had been earlier allotted to the respondent no. 4 (petitioner of CWJC No. 14223 of 2013) but the allotment had been cancelled and he had been directed by order dated 05.06.2013 in Misc. Case No. 404 of 2012 to hand over the key of the disputed shop and also to make payment of arrears of rent.

CWJC NO. 14223 of 2013 (“the second writ petition”)

3. Learned counsel for the petitioner invites attention to the agreement dated 03.01.2000 for a period of one year with renewal clause. It is stated that the petitioner had been carrying on business in the shop for a number of years. Having met with an accident however, his other family members came to his rescue and helped continue running the business. A show cause notice dated 20.11.2011 came to



be issued by the respondent-Board alleging various irregularities. It was clearly mentioned therein that failure to respond would result in automatic cancellation of the allotment of the shop.

4. Learned counsel for the petitioner submits that a show cause reply was duly filed within time on 28.11.2011 (Annexure-3), but the same was completely ignored. The impugned order of cancellation dated 22.08.2012 made effective retrospectively from 26.12.2011 (Annexure-4) has been arbitrarily passed by the Sub-divisional Officer, Samastipur-cum-Special Officer of the respondent-Board in oversight of the petitioner's show cause reply and thus stands vitiated. Against the said order of cancellation, the petitioner represented before the Sub-divisional Officer-cum-Special Officer, which was disposed of by order dated 19.06.2013 also impugned herein. Having considered the show cause reply of the petitioner, it was once again held therein that the petitioner had contravened the terms and conditions of the agreement and had not taken permission for the shop to be run by other persons. Various irregularities committed by the petitioner were pointed out and accordingly the petitioner was directed to hand over the key of the shop pursuant to the order of cancellation with effect from 26.12.2011 and also to make payment of arrears or rent.

5. Learned counsel for the respondent-State appearing in the writ petitions respectively have been heard.

6. It is a matter of record that the allotment of the shop in



favour of the petitioner of the second writ petition was cancelled by the impugned order dated 22.08.2012 with effect from 26.12.2011. The said order of cancellation has been impugned on the ground that the same was passed without considering the show cause reply of the petitioner. Rather than approaching this Court for appropriate relief at that stage itself, the petitioner of the second writ petition preferred to represent before the Sub-divisional Officer-cum-Special Officer which was disposed of on 25.07.2013, whereby he was directed to hand over the key and make payment of arrears of rent. It is only after such order was passed that he chose to approach this Court to challenge the order of cancellation dated 22.08.2012 as well as subsequent order of the Sub-divisional Officer-cum-Special Officer dated 19.06.2013. In the meantime on 22.07.2013, the shop had already been allotted in favour of the petitioner of the first writ petition.

7. This Court is therefore of the view that the petitioner of the second writ petition did not act with due diligence and there has been delay and laches on his part. If the order of cancellation dated 22.08.2012 had been passed without consideration of his show cause reply, he ought to have approached this Court for appropriate relief immediately. The respondent authorities cannot be faulted for going forward and entering into a fresh agreement for allotment of the shop in question in terms of the agreement dated 22.07.2013 in favour of the petitioner of the first writ petition.



8. It is accordingly held that the respondents were bound to give effect to the agreement dated 22.07.2013 allotting the shop in favour of the petitioner of the first writ petition after the agreement with the petitioner of the second writ petition was cancelled by the order dated 22.08.2012, which was not challenged before this Court at the appropriate time. The respondents are directed to ensure that the key to Shop No. SG 52 is handed over to the petitioner of the first writ petition forthwith.

9. CWJC No. 12103 of 2015 accordingly stands allowed and CWJC No. 14223 of 2013 stands dismissed. There shall be no order as to costs.

Chandran/BT

(Vikash Jain, J)

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	20.11.2017
Transmission Date	N.A.

