

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16214 of 2016

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Mahmood Alam son of Late Abdul Jabbar, Resident of Mohalla - Pokhra,
Madhuban Colony, Ward No. 5, P.S. Hajipur Town, District - Vaishali at Hajipur

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
 2. The Principal Secretary, Urban Development and Housing Department of Bihar, Patna
 3. The District Magistrate, Vaishali at Hajipur, District Vaishali at Hajipur
 4. The Nagar Parishad, Hajipur through the Chief Executive Officer District Vaishali at Hajipur
 5. The Chief Executive officer, Nagar Parishad, Hajipur, District Vaishali at Hajipur
 6. Md. Khurshid Son of Late Abdul Jabbar Resident of Mohalla - Pokhra,
Madhuban Colony, Ward No. 5, P.S. Hajipur Town, District Vaishali at Hajipur
- Respondents
- =====

Appearance :

For the Petitioner : Mr. Mazharul Hassan, Advocate.
For the State : Mr. Arun Kumar, AC to GP-1
For the Nagar Parishad : Mr. Kumar Manish
Mr. Madan Mohan
Ms. Pallavi Pandey, Advocates.

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 20-11-2017

The present writ petition has been filed for quashing the order contained in Memo No. 1412 dated 06.11.2013 passed by the respondent no. 5, whereby and whereunder the respondent no. 5 has been pleased to inform the petitioner that pursuant to the decision of the Empowered Standing Committee, the allotment of his Shop No. 154 situated at Gudari Bazar has been cancelled; for a direction to the respondent no. 5 to produce the decision of the Empowered Standing Committee, Nagar Parishad, Hajipur dated 16.09.2013 wherein a decision was taken for cancellation of allotment of shop no. 14 in



favour of the petitioner and on production the same may be quashed and to restrain the respondents from eviction of the petitioner of the peaceful possession over the Shop No. 154 situated at Gudari Bazar, Hajipur.

2. Learned counsel for the petitioner submits that the impugned order dated 06.11.2013 has been passed on the basis of a complaint filed by one Md. Khurshid who is none other than the petitioner's own brother, on the ground that the petitioner had obtained the Shop No. 154 on the basis of forged documents and in respect of which Case No. 23/978 had been filed in the Court of learned Munsif, Hajipur. It is submitted that the decision of the Empowered Standing Committee of the Nagar Parishad was not an informed one as the same was taken without verification of facts. The said Case No. 23/978 was not pending as informed on an application filed by the petitioner under Right to Information Act. Moreover, no opportunity of hearing whatsoever was granted to the petitioner prior to passing of the impugned order of cancellation. The petitioner has paid rent upto September, 2013 but thereafter the respondents have not been accepting the rent and have prevented the petitioner from entering the shop.

3. Learned counsel for the respondent-Nagar Parishad appears and has been heard. He relies on the counter affidavit to support the impugned order of cancellation dated 06.11.2013 as the



same had been passed in pursuance of the decision of the Empowered Standing Committee which had reason to believe that fraudulent means had been adopted by the petitioner in the transfer of allocation of the shop in his name by a will as the shop in question had originally been allotted in the name of the father of the petitioner.

4. Having heard the parties and on a consideration of the materials on record, this Court finds merit in the writ petition. The respondents in the counter affidavit have not disputed the stand of the petitioner that no opportunity had been granted either by the Empowered Standing Committee or by the Executive Officer prior to the decision taken for cancellation of the shop in the name of the petitioner. Moreover, respondents have stated that it was thought not necessary to obtain a copy of the plaint of Case No. 23/978 along with a complaint of Md. Khurshid as the matter appeared to be sub judice in a competent court of law having jurisdiction. Clearly, therefore the respondents have acted without minimal verification of facts and on the assumption that the statement made by Md. Khurshid was sacrosanct and beyond reproach.

5. It is well settled that before a person is visited with adverse consequences, he must be granted an opportunity of being heard, which, in the present case, has not been done and hence the decision making process stands vitiated.

6. The decision of the Empowered Standing Committee



dated 16.09.2013 as well as the impugned order dated 06.11.2013 (Annexure-4) are hereby quashed and the Nagar Parishad is directed to ensure peaceful possession of the Shop No. 154 to the petitioner forthwith. It is made clear however that the respondents shall be at liberty to take fresh steps in the matter, if so advised, after grant of proper opportunity of hearing to the petitioner in accordance with law.

7. The writ petition stands allowed.

Md. Ibrarul/BT

(Vikash Jain, J)

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	22.11.2017
Transmission Date	N.A.

