

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 14952 of 2015

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1. Smt. Prabhawati Devi, Wife of Gyanchand Sah, Resident of Village+P.O.- Lakadhi Dargah, P.S.- Badhhariya, District- Siwan.
 2. Smt. Kalawati Devi, Wife of Chotelal Sah, Resident of Village- P.O.+P.S.- Salempur, District- Devariya. Both daughter of Late Sri Raghunath Sah, at present resident of Village + P.O. + P.S.- Mairwa, District- Siwan.

.... Petitioner/s

Versus

1. The State of Bihar through District Magistrate, Siwan.
2. The Deputy Development Commissioner cum Chief Executive Officer, District Board, Siwan.
3. The Chairman, District Board, Siwan.
4. The District Engineer, District Board, Siwan.
5. The Superintendent of Police, District- Siwan.
6. The Officer-in-charge Police Station, Mairwa District Siwan.
7. Bagrangi Kumar Son of Shivjee Prasad R/o Village- Moti Chapar P.O. + P.S.- Mairwa, District- Siwan.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ashok Kumar Gupta, Advocate
For the Zila Parishad	:	Mr. Dhananjay Kumar, Advocate
For the State	:	Mr. Kameshwar Prasad Gupta, S.C. 10
For the Respondent No. 7	:	Mr. Kedar Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 26-07-2017

Heard learned counsel for the petitioners; State and the
respondent no. 7.

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

*“1. That instant writ application is being
filed by poor lady for setting aside letter no. 539
dated 20.06.2015 issued by D.D.C. cum Chief
Executive Officer District Siwan, by which a shop
of District Board Mairwa “ within Siwan District”
upon which her ancestor grand/grand-father was
allotted this shop since 1954 up till now, but in
connivance with one Bajrangi Kumar aforesaid*



shop in question has been settled without any notice to petitioner or without any norms and lively hood of the petitioner has been encroached/enshringed and by directing police shops of petitioner has been vacated which is without jurisdiction of the Respondents although for the same year 2015 same shop was also allotted to petitioner and agreement was also executed which will continue for three years.

i. That petitioner further seeks indulgence from Hon'ble High Court to allow/direct respondents to pay compensation which has incurred during police interference/activity in this shop and goods and articles were taken away and destroyed."

3. The controversy relates to a shop of the Zila Parishad, Siwan, which is claimed both by the petitioners and the respondent no. 7, on the basis of settlement and agreement executed between them and the Zila Parishad. The shop is said to have been allotted in favour of the respondent no. 7 on 02.10.2014 and subsequently agreement on 21.10.2014, whereas in the case of the petitioners, the agreement was made on 04.02.2015. The respondent no. 7 is said to have been aggrieved by the fact that despite the shop allotted to him and him running the same, the police, in connivance with the petitioners, had put lock on the shop due to which they moved before the District Magistrate, Siwan, who had marked the matter to his subordinate which has resulted in the police opening the shop and handing over the same to the respondent no. 7. Being aggrieved, both by the allotment of the shop in favour of the



respondent no. 7 and the police handing over the shop to the respondent no. 7, the petitioners have moved the Court in the present writ application.

4. Learned counsel for the petitioners submitted that the shop in question was allotted to their ancestor and was coming in their possession from the year 1954 and thereafter, upon the death of the original allottee, subsequent allotment orders were made in favour of his heirs and finally in favour of the petitioners by agreement dated 04.02.2015. Learned counsel submitted that behind the back of the petitioners, the Zila Parishad had allotted the shop to the respondent no. 7 and executed agreement but the same was without any notice to them. It was further submitted that the petitioners were running their shop and the lock put by the police was illegal and further the handing over of the shop to respondent no. 7 is also patently illegal.

5. Learned counsel for the State submitted that in the *Janta Darbar* of the District Magistrate, Siwan, a petition was filed by the respondent no. 7 seeking his intervention in the matter alleging that the police in connivance with the petitioners had put lock on the shop duly allotted to him. It was submitted that upon verification, the same was found to be correct and thus, the police was directed to open the lock and hand over the shop to the



respondent no. 7.

6. Learned counsel for the Zila Parishad and respondent no. 7 took a unified stand and submitted that the shop in question was allotted and agreement executed between the parties on 21.10.2014, giving the details of the shop as well as its boundaries and the shop in controversy, which has been handed over to the respondent no. 7, is the shop as per the details in the agreement of the Zila Parishad with the respondent no. 7. They submitted that in terms of the agreement executed with the petitioners on 04.02.2015, the boundaries shown of the shop is different to that of the boundaries of the shop allotted to the respondent no. 7. They have taken a categorical stand, which is also supported by learned counsel for the State, that the shop which has been handed over to the respondent no. 7 is as per the boundaries mentioned in the agreement of the Zila Parishad with the respondent no. 7 and not the shop whose boundaries have been detailed in the agreement of the Zila Parishad with the petitioners. Learned counsel for the Zila Parishad has further drawn the attention of the Court to the receipts, copies of which have been brought on record by the petitioners in the writ petition, especially to those dated 20.11.2004 and 27.02.2011. He pointed out that besides the receipts not being in the format and print of the Zila Parishad, the same are apparently forged and fabricated



for the reason that both receipts are shown to have been issued from the same book i.e., Book No. 68, but surprisingly the receipt dated 20.11.2004 discloses the receipt number as 25 whereas the receipt dated 27.02.2011 of the same book carries receipt no. 24. Learned counsel further drew the attention of the Court that in the receipt dated 20.11.2004, the amount mentioned is Rs. 1,530/- as rent from January, 2004 to December, 2004 i.e. for 12 months whereas the same amount is mentioned in the receipt dated 27.02.2011 but the period is 14 months i.e. from January, 2010 to February, 2011. He pointed out that the same is also suspicious as rent for 12 months and 14 months cannot be the same. Learned counsel submitted that the rent in 2011 could not have been less than the rent in the year 2004, but according to the receipts, in the year 2004 for 12 months, the petitioners has paid Rs. 1,530/- whereas in the year 2011, he has paid the same amount for 14 months. Learned counsel further submitted that the local enquiry has revealed that the petitioners were never running the shop in question and thus, the allotment to the respondent no. 7 which was also prior in time is legal and justified and further that the same shop was never allotted to the petitioners, which would be clear from the details of the shop mentioned in the two agreements itself.

7. At this juncture, learned counsel for the petitioners



tried to show to the Court a representation filed by the petitioners to the District Magistrate on 29.07.2015 alleging that the shop in question had been wrongly allotted to the respondent no. 7 and forcibly the lock had been broken and possession handed over to him. On a query of the Court as to why such filing of representation before the District Magistrate was neither mentioned in the writ petition nor copy brought on record when the writ petition itself was filed in September, 2015 whereas the said letter shows that it was submitted in July, 2015, learned counsel for the petitioners submitted that he had not been provided the same by the petitioners.

8. Having considered the rival contentions, the Court does not find any merit in the writ application. The petitioners have not been able to show to the Court that the shop allotted to them was ever allotted to anyone else much less the respondent no. 7. Further, there is also nothing on record to show that the so called shop allotted to the petitioners was the same shop which was allotted to the respondent no. 7 or which was initially locked up and later on, after opening of the lock, the possession handed over to the respondent no. 7. Moreover, the allotment in favour of respondent no. 7 was more than three months prior to the allotment made in favour of the petitioners. This is one aspect of the matter. The other aspect of the matter, as has been raised by learned counsel for the



Zila Parishad, relating to the receipts, copies of which have been brought on record, as has been discussed above, clearly indicates that the same are not genuine. Furthermore, even the aforesaid two receipts do not disclose to which shop they relate much less the shop claimed by the petitioners.

9. Be that as it may, for reasons aforesaid, no reliance can be placed on such receipts. As far as the issue relating to the petitioners having submitted a representation before the District Magistrate in July, 2015 is concerned, the same neither being disclosed in the writ petition nor copy thereof brought on record, even though the writ petition was filed in September, 2009, in the opinion of the Court, the authenticity of the same besides being suspect, it would also amount to suppression of material fact on the part of the petitioners. Once the Court has come to a conclusion that the description of the shops and their boundaries in terms of the agreement entered into by the Zila Parishad with the petitioners on the one hand and the respondent no. 7, on the other hand being different and distinct and the unrebutted stand on behalf of the Zila Parishad and the respondent no. 7 that the shop which has been handed over to them is the shop, as per the details mentioned in the agreement of the Zila Parishad and the respondent no. 7, to which there has been no counter or material brought to indicate otherwise,



the Court has no hesitation to hold that the writ petition is both misconceived and frivolous.

10. Once the Court finds no merit in the writ petition on the ground that it has not been established that the shop allotted to the petitioners in terms of the agreement, has been handed over to respondent no. 7, no question arises for award of any compensation to the petitioners.

11. Accordingly, the writ petition stands dismissed.

(Ahsanuddin Amanullah, J.)

P. Kumar

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