

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.445 of 2017

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Nagendra Kumar son of Sri Rajendra Singh, resident of Mohalla North Krishnapuri,
P.S. Krishnapuri, District Patna.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Social Welfare Department,
Government of Bihar, Patna.
2. The District Magistrate/Chairman, Bodhgaya Temple Management Committee,
Bodhgaya.
3. The Secretary, Bodhgaya Temple Management Committee, Bodhgaya.
4. Sub-divisional Officer, Sadar, Gaya.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ram Pravesh Kumar, Advocate.
For the State	:	Mr. Gyan Prakash Ojha, G.A. 7 with Mr. Uday Shankar Pandey, A.C. to G.A. 7
For the B.T.M.C.	:	Mr. Ashok Kumar, Advocate.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 13-01-2017

Heard learned counsel for the petitioner, the State and
Respondent no. 3.

2. The petitioner has moved this Court for quashing of the
notice contained in Memo No. 972 dated 24.12.2016 issued by
respondent no. 4 by which the petitioner has been asked to show cause
as to why he is continuing in possession of the premises in question
after expiry of his lease.

3. Learned counsel for the petitioner submitted that the
premises belongs to Bodh Gaya Temple Management Committee
(B.T.M.C.) and was given on lease for a period of ten years to the
petitioner under agreement dated 1st January, 2004. It was submitted



that by further modification to the agreement on 31st March, 2006, it was mutually agreed between the parties that Rs.45,47,280/- which was spent by the petitioner on renovation and maintenance of the premises in question would, upon expiry of the lease period, be paid to the petitioner or in alternative be adjusted in the lease fee by way of extension or renewal of the agreement in future. Learned counsel submitted that neither the money has been paid nor extension or renewal has been granted but in view of the agreement, the petitioner cannot be evicted, and that too, in the manner which has been adopted by the respondents.

4. Learned counsel further submitted that the notice itself is bad in law for the reason that the premises in question will not come under the definition of 'government premises' in terms of Section 2 (c) of the Bihar Government Premises (Rent, Recovery and Eviction) Control Act, 1956 (hereinafter to be referred to as the Act). He submitted that besides the aforesaid, the petitioner earlier was also directed to vacate the premises and his lease cancelled against which he had moved this Court in C.W.J.C. No. 7763 of 2008 and a coordinate Bench of this Court by order dated 05.01.2011 had quashed the order of cancellation of lease. Learned counsel submitted that when the period of lease had expired in the year 2014, the respondents had again directed him to vacate the premises against



which he came to this Court in C.W.J.C. No. 3347 of 2015, which by order dated 24.10.2016 was permitted to be withdrawn giving liberty to the petitioner to pursue Title Suit No. 121 of 2016 which he had filed in the court of Munsif II, Gaya with regard to the same issue. It was pointed out that the Court had also observed that the application for injunction filed by the petitioner was to be considered expeditiously on its own merit. Learned counsel submitted that pursuant to such observation the petitioner has filed a petition under Order XXXIX Rules 1 and 2 and Section 94 of the Code of Civil Procedure which is still pending. Learned counsel submitted that once the respondents have appeared in the case and the matter relating to injunction is under consideration, the notice to the petitioner asking him to show cause as to why he be not evicted, is not proper. Learned counsel submitted that day before yesterday, the authorities have also directed the petitioner to vacate the premises by 15th January, 2017 failing which the same shall be got vacated by force.

5. Learned counsel for the State submitted that on the requisition made by B.T.M.C., a show cause has been asked and whatever the petitioner shall give, the same shall be duly considered by the State authorities. It was submitted that the State authorities cannot be faulted as only a notice to show cause has been issued.

6. Learned counsel for the B.T.M.C. submitted that the



lease having expired, the petitioner does not have any right to continue in possession of the premises in question. However, on query as to what steps they have taken in the light of the supplementary agreement between the parties relating to payment of certain amount to the petitioner upon expiry of the lease or in the alternative to extend or renew the agreement, learned counsel submitted that the same has not been done.

7. Having considered the rival contentions, the Court is of the opinion that the intervention of the State authorities in the present matter, in the manner in which it has been done, is not justified. The respondents have not been able to show as to how the premises comes under the definition of 'government premises' in terms of the provisions of the Act, and thus, any action by the State authorities under such Act cannot be sustained. However, since the matter is directly related to and based upon the agreement between the parties and adjudication is pending before the Civil Court of competent jurisdiction, in which a petition for injunction has also been filed, in the considered opinion of this Court, it would be appropriate for the parties to pursue the matter there.

8. Accordingly, the writ petition stands disposed off with a direction to the court where Title Suit No. 121 of 2016 is pending i.e., Munsif II, Gaya, to decide the petition filed by the petitioner



under Order XXXIX Rules 1 and 2 and Section 94 of the Code of Civil Procedure within one month from the date of production of the certified copy of this order before it. The issue shall abide by the decision of the court concerned. The petitioner shall appear before the court below within 2 weeks from today along with a copy of this order.

9. Till such time, no coercive steps shall be taken against the petitioner with regard to getting the premises in question vacated.

10. The court below shall thereafter also decide the suit itself within nine months positively. If any of the parties do not cooperate, the court shall proceed and decide the matter, in accordance with law, but shall adhere to the time fixed for disposal.

11. The Court would like to make it clear that the parties have agreed to the time schedule fixed hereinabove and thus, would also cooperate to ensure that the same is adhered to.

12. The Court would further clarify that it has not expressed any opinion on the merits of the matter, which shall be decided by the court concerned, without being prejudiced by any observation made in this order.

(Ahsanuddin Amanullah, J)

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