

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1829 of 2015

IN

Civil Writ Jurisdiction Case No. 8462 of 2014

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Madan Prasad Poddar @ Madan Mohan Poddar S/o Om Prakash Poddar, resident of Mohalla- Sagar Mal Chowk, Station Road, in front of Pani Tanki, P.S. & Distt.- Khagaria

.... Respondent no. 5 / Appellant

Versus

1. The State of Bihar through Principal Secretary, Urban Development Department, Govt. of Bihar, New Secretariat, Patna
2. The Chairman, Nagar Parishad, Khagaria
3. The Executive Officer, Nagar Parishad, Khagaria
4. The Ward Commissioner, Urban Stall Incharge, Nagar Parishad, Khagaria

..... Respondents / Respondents 1st Set

5. Gopal Poddar, S/o Om Prakash Poddar, Mohalla - Sagar Mal Chowk, Station Road, Pani Tanki, P.S. & Distt.- Khagaria

.... Petitioner / Respondent 2nd Set.

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Appearance:

For the Appellant/s : Mr. Tarun Kumar Sinha, Advocate.

For the State : Mr. Sita Ram Yadav, GP 16.

For the Nagar Parishad : Mr. Rakesh Chandra, Advocate.
(Khagaria)

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 21-11-2017

Appeal has been preferred by the respondent no. 5 of the Writ, who happens to be the own brother of the petitioner before the Writ Court, who is now respondent no. 5 in the Letters Patent Appeal.

2. Respondent no. 5 sought quashing of Memo No. 580 dated 13.03.2014 issued by the Nagar Parishad, Khagaria which had the effect of cancelling the settlement made in respect of Stall No. A-8 situated at Station Road, Khagaria on the ground that he had sublet the



stall to another person, namely, Binod Kumar Jaiswal. Admitted position is that the Municipal Corporation had settled the said stall in favour of the present appellant as well as the private respondent together. Obviously, because of some differences which cropped up between the brothers, the private respondent decided to sublet the stall in favour of one Binod Kumar Jaiswal without permission or consent. When this complain was made, the Executive Officer issued a show cause notice to the private respondent and after perusing the defence which was taken by him that it was not a case of subletting but the shop was being run by an employee because he was keeping unwell action was taken.

3. The matter was examined by the Executive Officer, enquiry was also held by them and it emerged that actually it was a case of subletting, therefore, the order of cancellation was made.

4. When the appeal was taken up and since it was a matter relating to two brothers, the Court granted them time to reconcile the differences amongst themselves because the action of private respondent no. 5 was hurting the interest of the younger brother and, obviously, subletting the shop which was jointly allotted had created a situation which was detrimental to the interest of the younger brother.

5. There is certain amount of rigidity involved in the conduct of the elder brother and he is not willing to reconcile or annul



the arrangement which he had made with regard to the shop in question. In view of the same, we are of the opinion that *prima facie* since the elder brother, i.e., private respondent is not interested in running the shop any further but wants to earn some kind of income by renting it out by subletting it will be in the interest of things that the municipal authorities settle the shop by restoring the order dated 13.03.2014 passed by the Executive Officer, which is Annexure-5 to the Writ Application, in the name of the present appellant, namely, Madan Prasad Poddar singly. This must be done within a period of eight weeks from the date of production of a copy of this order.

6. Appeal is allowed.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

Dilip, AR

AFR/NAFR	NAFR
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