

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10055 of 2018

=====

Sumant Kumar, son of Pramod Kumar, resident of village Upranwan, P.S.
Biharsharif, Distric Nalanda

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Road Construction Department, Patna
2. The District Magistrate cum Collector, Nalanda at Biharsharif
3. The Deputy Development Commissioner, Nalanda at Biharsharif
4. The Executive Engineer, Road Construction Department, Road Division, Biharsharif, District Nalanda
5. The Sub-divisional Officer cum Assistant Engineer, Road Construction Department, Road Sub-division, Rajgir, District Nalanda
6. The Executive Officer, Nagar Panchayat, Rajgir, District Nalanda

.... Respondents

=====

Appearance :

For the Petitioner/s : Mr. Rishitdeo Kumar Singh, Adv.
For the Respondent/s : Mr. Raj Ballabh Prasad Yadav, AAG11
For Nagar Panchayat : Mr. Dinesh Maharaj, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 31-05-2018

Heard Mr. Rishitdeo Kumar Singh, learned counsel for the petitioner, Mr. Raj Ballabh Prasad Yadav, learned AAG-11, for the State and Mr. Dinesh Maharaj, learned counsel for the Nagar Panchayat, Rajgir.

The writ petition was filed for issuance of writ in the nature of certiorari for quashing the order bearing Memo No. 68 dated 12.5.2018, whereby the settlement made by the petitioner for holding market on the street of Rajgir during Annual Malmas Mela vide order bearing Memo No. 66 dated 11.5.2018 of the respondent no.5, the S.D.O. cum Assistant Engineer, a copy of which is enclosed at Annexure-2 to the writ petition, has been cancelled. The order of



cancellation is impugned at Annexure-5 to the writ petition.

It is taking note of the argument of learned Counsel for the petitioner that within 24 hours of the order of settlement issued by the S.D.O. cum Assistant Engineer on 11.05.2018 that on the very next day, the settlement was cancelled, learned State Counsel was directed to seek instruction as to the reasons for such hurried cancellation and which according to the petitioner was without opportunity of hearing.

A counter affidavit was initially filed on behalf of the Road Construction Department in which reliance was placed on the Bihar Street Vendors (Protection of Livelihood and Regulation of Street Vending) Schemes, 2017 framed under section 38 of the Street Vendors (Protection of Livelihood and Regulation of Street Vendor) Act, 2014 in support of the decision making process as according to the respondent authority of the Road Construction Department, the jurisdiction lay with the local authority i.e. Nagar Panchayat, Rajgir for making any such settlement.

This Court taking note of the stipulations of the Scheme required an answer as to whether it was made applicable to the city of Rajgir. A counter affidavit is filed by the respondent no. 6 i.e. Executive Officer Nagar Panchayat, Rajgir who has appeared through Mr. Dinesh Maharaj to place the relevant facts on record which in fact removes the very basis of settlement made with the petitioner. Mr. Maharaj in reference to the settlement notice issued by the Nagar



Panchayat, Rajgir, a copy of which is enclosed at Annexure-C to the counter affidavit filed today, informs that it is following this notice that three applicants came forward to claim the settlement as against 'Surakshit Jama' of Rs. 2,05,13,298/- and security deposit of Rs. 10,25,665/-. He submits that settlement for holding market was made with one Sanjay Kumar Singh as back as 19.03.2018 for the period of Mela i.e. 16.05.2018 to 13.06.2018 on his highest bid of Rs. 2,05,51,000/- (Rs. Two crores five lakhs and fifty thousand only). It is submitted that following settlement made that an agreement has been entered in between Nagar Panchayat with the settlee Sanjay Kumar Singh which is duly registered in the Sub-Registry office, Rajgir, a copy of which is at Annexure-D to the counter affidavit filed today. He further informs that no sooner the settlee gathered knowledge of the process of settlement initiated by the Road Construction Department vide notice at Annexure 1 that he filed a complaint on 9.05.2018 at Annexure-F and whereupon advisory was issued by the Executive Officer to the Executive Engineer, Road Construction Department, Upper Road Division, Bihar Sharif for doing the needful. It is stated since in the meanwhile a settlement order had been made with the petitioner that, in view of this advisory dated 10.05.2018 the settlement made by the petitioner on 11.05.2018 at Annexure-2 by the Assistant Engineer was cancelled by the same authority through his order impugned bearing no.68 dated 12.05.2018,



inasmuch as there could not have been two settlements for the same area and same purpose. He thus informs that since the settlement in favour of the petitioner, was illegal because the entire area including the area settled with the petitioner had already been settled with Sanjay Kumar Singh vide Annexure –D to the counter affidavit, that the that the cancellation order was rightly issued.

I have heard learned Counsel for the parties and have perused the records.

The facts on record go uncontested and are undisputed. While there was already a settlement in favour of Sanjay Kumar Singh for holding market during Annual Malmass Mela, Rajgir vide Annexure-D by the Nagar Panchayat through a registered document, the Road Construction Department completely ignorant of this settlement, initiated a fresh process through the advertisement at Annexure-1 and the Assistant Engineer proceeded to settle the market at an extremely low rate with the petitioner on 11.05.2018, however no sooner did he gather information about the illegality in this exercise as discussed above and the fact of settlement of the Mela with Sanjay Kumar Singh that he recalled his order of settlement vide the order impugned bearing no. 68 dated 12.05.2018. It is not in dispute that even though an order of settlement was issued, before it could be translated into a registered document, that it has been recalled.



Mr. Yadav learned Additional Advocate General in reference to Annexure-B to the counter affidavit of the Road Construction Department informs that soon after the cancellation on 12.05.2018 that the petitioner was directed to take refund of the amount deposited by him but instead he has rushed to this Court.

Having heard learned Counsel for the parties and taking note of the circumstances existing, I am of the considered opinion that no right much less any legal right vested in the petitioner by virtue of an illegal settlement order at Annexure-2 because the entire market area including the area in question had already been settled through a registered document with Sanjay Kumar Singh and thus no enforceable right vested in the petitioner to claim settlement which was illegal from the very inception and has rightly been cancelled by the order impugned dated 12.05.2018. Since there is already a direction by the Assistant Engineer to the petitioner to take his refund, it is for the petitioner to do the needful.

No cause for any interference is called for nor any direction is needed.

The writ petition is dismissed.

(Jyoti Saran, J)

Archana/Surendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.06.2018
Transmission Date	NA



