

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1680 of 2017

In
Civil Writ Jurisdiction Case No.14223 of 2013

=====

M/s Awtar Enterprises Through Its Proprietor Ajay Kumar Gupta, son of Ram Sagar Gupta, Resident of Village- Chak Salem, Ward No.13, P.O. & P.S. - Patori, Block- Patori, District- Samastipur (Bihar)

... .. Appellant/s

Versus

1. The State Of Bihar through The Secretary, Urban Development Department, Bihar, Patna
2. The Sub-Divisional Officer-Cum-Special Officer, Agriculture Produce Market Committee (Dissolved), Samastipur
3. Sri Anil Kumar Agrawal, Son of Late Bhola Ram Agarwal, Proprietor of M/s. A.K. Enterprises, Residing at Village and Post- Bakhri Bazar, P.S. Bakhri Bazar, District- Begusarai

... .. Respondent/s

=====

Appearance :

For the Appellant/s	:	Mr. M.P. Dixit, Adv. Mr. S.K. Dixit, Adv. Mr. Sanjay Kr. Choubey, Adv. Mrs. Swastika, Adv. Mr. Shailendra Kumar, Adv. Mr. Sunil Kumar, Adv.
For the Respondent/s	:	Mr. Subodh Kumar Sinha, Adv.
For the State		Mr. Rakesh Ambastha, AC to AAG 07

=====

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 13-03-2018

Seeking exception to an order dated 15.11.2017 passed by the learned Writ Court in C.W.J.C. No.14223 of 2013, this appeal has been filed by the writ petitioner under Clause X of the Letters Patent.



We find from the records and the materials available on record that the shop in question, bearing Shop No.SG 52, situated in Agricultural Marketing Committee area, Samastipur was allotted to the petitioner under an agreement entered into on 3.1.2000. It seems that on 20th of November, 2011 a show cause was issued to the appellant herein pointing out irregularities committed and breach of agreement with regard to allotment in question and based on the reply submitted by the petitioner, the allotment was cancelled on 22.8.2012 retrospectively with effect from 26.12.2011. After the cancellation was ordered, petitioner submitted a representation before the Sub-divisional Officer-cum-Special Officer immediately thereafter, but when the Sub-divisional Officer-cum-Special Officer disposed of the matter on 19.6.2013 and challenging the same, the writ petition in question was filed on 25.7.2013. The learned Writ Court dismissed the writ petition on the ground that the allotment was cancelled on 22.8.2012 and the writ petition filed in the year 2013 is barred by the principle of delay and laches and did not interfere into the matter.

Grievance of the petitioner is that instead of considering the show cause filed by the petitioner and the justification for cancellation, dismissal of the writ petition on the



ground of delay was not warranted on the ground that after the impugned action was taken on 22.8.2012 petitioner had taken recourse to the departmental remedy available and when the same was finalized on 19.6.2013 by the Sub-divisional Officer-cum-Special Officer, the writ petition filed within a short period of 30 to 32 days on 25.7.2013 cannot be stated to have been barred by delay and laches.

We are of the considered view that there is much force in the aforesaid contention of the petitioner. A perusal of the order goes to show that the learned Writ Court did not advert to consider the matter on merit and refused to interfere into the matter primarily on the ground that cancellation of the allotment was after the fresh agreement was entered into by the private respondent and there is delay and laches in preferring the writ petition. The fact is that after the impugned action of cancellation was taken on 22.8.2012, the inter departmental remedy was availed of which was decided on 19.6.2013 and when the petitioner filed the writ petition on 25.7.2013, merely because after the cancellation of petitioner's allotment a new agreement was entered into by the private respondent, it cannot be a ground to refuse to consider the grievance of the appellant. The question as to whether the cancellation of allotment was in accordance with law had to be



looked into by the learned Writ Court and the writ petition could not be dismissed merely on the ground of delay and an agreement entered into by the private respondent.

Keeping in view the aforesaid, we allow the appeal, quash the order dated 15.11.2017 passed in C.W.J.C. No. 14223 of 2013, restore the writ petition to its original file and request the learned Writ Court to dispose of the matter on merits in accordance with law after hearing all concerned.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

K.C.Jha/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	27.03.2018
Transmission Date	

