

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Letters Patent Appeal No.79 of 2018**

**In**

**Civil Writ Jurisdiction Case No. 16214 of 2016**

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Khurshid Alam @ Md. Khurshid, S/o Late Abdul Jabbar, resident of Mohalla-Mufti mohalla, Town thana road, P.S.-Nagar Hajipur, District-Vaishali, at present resident of Mohalla- Pokhra, madhuban Colony, Ward no.5, P.S. Hajipur Town, District- Vaishali at Hajipur.

.... .... Appellant

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Urban Development & Housing Department, Bihar.
3. The District Magistrate, Vaishali at Hajipur, District Vaishali at Hajipur.
4. The Nagar Parishad Hajipur through the Chief Executive Officer, District-Vaishali at Hajipur.
5. The Chief Executive Officer, Nagar Parishad Hajipur, District-Vaishali at Hajipur.
6. Mahmood Alam, S/o Late Abdul Jabbar, resident of Mohalla-Pokhara Madhuban Colany, Ward no.5, P.S.-Hajipur Town, District-Vaishali at Hajipur.

.... .... Respondents

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**Appearance :**

For the Appellant/s : Mr. Lakmesh Marvind, AR  
For the Respondent/s : Mr. Yogendra Prasad Sinha, AAG7  
For Respondent No.5 : Mr. Madhu Prasun, Adv.  
Mr. Manish Kumar, Adv.  
For Zila Parishad : Mr. Ankit Katriar, Adv.

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**CORAM: HONOURABLE THE CHIEF JUSTICE**

**and**

**HONOURABLE MR. JUSTICE JYOTI SARAN**

**ORAL ORDER**

**(Per: HONOURABLE THE CHIEF JUSTICE)**

5 22-11-2018

**Re: IA No.2486 of 2018**

Having heard learned counsel for the parties we are satisfied that the delay deserves to be condoned.

The interlocutory application is allowed. The delay is condoned and the appeal shall be treated to have been filed in



time.

**Re: LPA No.79 of 2018**

Heard Shree Lakmesh Marvind, learned counsel for the appellant, Shree Manish Kumar, learned counsel for the 5<sup>th</sup> respondent, Shree Ankit Katriar, learned counsel for the Nagar Parishad, Hajipur and Shree Shankar Kumar, learned AC to AAG-7.

This is an unfortunate dispute between two brothers with regard to succession of allotment of a shop by the Nagar Parishad, Hajipur that was earlier licensed to the father of the petitioner and the respondent no.5. The dispute arose after the death of the earlier allottee and both the petitioner and the respondent no.5 sought allotment of the said shop. Allotment, however, proceeded but on account of this dispute and the claim of respondent no.5 on the basis of a Will, a decision was taken on 16<sup>th</sup> of September, 2013 and the order dated 6<sup>th</sup> of November, 2013 was passed against the respondent no.5. The said orders came to be challenged by the 5<sup>th</sup> respondent in the writ petition giving rise to the present appeal and were quashed on the ground that the orders have been passed without carrying out the minimal verification of facts and without giving any opportunity of hearing.

It appears that the writ petition was filed in the year 2016



without bringing further developments in the matter of allotment to the notice of this Court. It is evident that a fresh order had already been passed in between on 27<sup>th</sup> January, 2014 by the Nagar Parishad, Hajipur, whereby shop no.154 was allotted to Md. Khurshid and Md. Sahid Alam jointly, the petitioner and the son of 5<sup>th</sup> respondent herein. This order dated 27<sup>th</sup> January, 2014 remained unchallenged but in the absence of the said order having been brought to the notice of the learned Single Judge, the writ petition was allowed on 20<sup>th</sup> of November, 2017 giving rise to the present appeal.

The appellant was a party to the writ petition but no notice appears to have been served on him before proceeding to decide the writ petition.

Having considered the aforesaid facts and keeping in view the submissions raised it is evident that the impugned judgment dated 20<sup>th</sup> of November, 2017 was ex-parte to the appellant who was respondent no.6 in the writ petition. Consequently, he has been adversely affected and the said decision has been rendered without noticing the order already passed by the Nagar Parishad on 27<sup>th</sup> of January, 2014.

Consequently, the appeal succeeds and is hereby allowed. The judgment dated 20<sup>th</sup> of November, 2017 is set aside and the



order of the Nagar Parishad dated 27<sup>th</sup> of January, 2014 is maintained.

It shall be open to the appellant and the respondent no.5 to seek bifurcation of the shop in case possible in order to accommodate the appellant as well as the respondent no.5 in the said shop for which an appropriate order shall be passed by the Nagar Parishad, Hajipur through its competent authority within a period of six weeks from today.

The appeal is allowed subject to the aforesaid directions.

**(Amreshwar Pratap Sahi, CJ)**

**(Jyoti Saran, J)**

Surendra/Anjula

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