

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6469 of 2016

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Usha Devi Wife of Om Prakash Bihari resident of Village- Naya Bazar, Pachana
Road, Harijan Gali, Ward No-23, District- Lakhisarai

.... Petitioner

Versus

1. The State of Bihar
2. The Principal Secretary, Department of Social Welfare Govt. of Bihar, Patna.
3. The Commissioner, Munger Division, Munger.
4. The Deputy Development Commissioner Munger.
5. The Deputy Development Commissioner Lakhisarai
6. The District Magistrate Munger.
7. The District Magistrate Lakhisarai
8. The Zila Parishad Munger
9. The Chief Executive Officer Zila Parishad Munger
10. The Zila Parishad Lakhisarai
11. The Chief Executive Officer Zila Parishad Lakhisarai
12. Most. Reeta Devi Wife of Late Vimal Kumar resident of Harijan Gali, Ward
No.-23, District- Lakhisarai.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Anis Akhtar
For the State : Mr. Ram Shankar Prasad, AC to GP-14
For the Res. Nos.5,10,11 : Mr. Dinkar Raj Bhandari, Advocate
For the Respondents -12 : Mr. Rama Kant Sharma (Sr. Adv.)

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 24-07-2018

Heard learned counsel for the petitioner and learned
counsel for the respondent nos. 5, 10 and 11 and learned counsel
for the respondent no. 12.



2. The instant writ petition has been filed by the petitioner for directing the respondents to ensure possession of Zila Parishad Naya Bazar Area Shop No-4 which she claims to have been illegally occupied by private-respondent no. 12.

3. The case of the petitioner is that her husband was initially allotted shop no. 4 by the competent authority of Zila Parishad and on the basis of said allotment, he was regularly paying rent to the then Zila Parishad, Munger. Subsequently, after certain period, when rent became due, the competent authority of the successor Zila Parishad, Lakhisarai through letter dated 08.11.2012, informed her husband to pay rent otherwise coercive measure could be taken to ensure payment of dues. Since the shop in question was illegally occupied by respondent no. 12, on 08.09.2014, her husband prayed from the District Magistrate, Lakhisarai as well as Deputy Development Commissioner-cum-Chief Executive Officer, Zila Parishad, Lakhisarai to ensure his repossession of Naya Bazar Area Shop No. 4. On the basis of said petition, the Executive Officer, Lakhisarai asked respondent no. 12 to submit her explanation why she should not be forcibly removed from the shop in question as she was not the allottee. Thereafter, the competent authority slept over the matter and after several months, the Chief Executive Officer, Lakhisarai vide order dated



07.05.2015 directed her husband as well as respondent no. 12 to produce the documents as well as the basis of possession so that dispute may be finally set at rest. However, the petitioner by incorporating the entire factual details in her petition dated 16.07.2015 again prayed to the Executive Officer, Lakhisarai to ensure the possession of the shop in question. Since no step was taken, she filed an application before the High Court Legal Services Committee for getting legal aid and on the said petition through proper channel, the status was called for from the Chief Executive Officer, Lakhisarai, who vide letter dated 27.07.2015 informed the Authority that the dispute is with regard to possession and only the competent civil court can redress the grievances raised by the petitioner.

4. Mr. Anis Akhtar, learned counsel for the petitioner submitted that the entire action of the respondent authorities in not putting the petitioner in possession of Zila Parishad Naya Bazar Shop No. 4 is arbitrary, unjust, improper and a purely whimsical action, which is fit to be set aside. He submitted that the respondent Zila Parishad has failed to ensure repossession of the shop in question from an illegal occupant of the shop as a result of which she is running her business from the said shop.

5. A counter-affidavit has been filed on behalf of



respondent no. 12 in which it has been pleaded that one Sita Ram Saw had two sons, namely, Ram Tarak Saw and Ram Avatar Saw. The petitioner is daughter-in-law of Ram Tarak Saw and respondent no. 12 is daughter-in-law of Ram Avatar Saw. The husband of respondent no.12, Vimal Kumar died only a few years back and after death of her husband, the dispute between the heirs of Ram Tarak Saw and Ram Avatar Saw arose. The further contention is that during the life time of Sita Ram Saw, Ram Avatar Saw, grandfather-in-law of respondent no. 12 got settlement of two shops sometimes in the year 1960 from Munger Zila Parisad, i.e. Shop Nos. 2 and 4. One shop was allotted in the name of Ram Tarak Saw, father-in-law of the petitioner and the other shop was allotted in the name of Ram Avatar Saw and from the date of allotment respective brothers were in possession of said allotted shops and doing their business. After demise of husband of respondent no. 12, the petitioner in connivance with the local authority started disturbing the peaceful possession of Shop No. 4 from where respondent no. 12 was running her bussiness.

6. Mr. Ramakant Sharma, learned senior counsel appearing for respondent no. 12 submitted that there is a dispute for partition of property after the death of husband of petitioner and at present, a partition suit is going on between the parties in the court



of Sub-Judge-1, Lakhisarai. In the backdrop of such family dispute, the coparcener Om Prakash Bihari @ Om Prakash in stead of approaching this Court directly, has filed this writ petition through his wife and has raised several disputed questions of fact and is trying to illegally dispossess respondent no. 12, who is a widow lady, from the shop with oblique and ulterior motive.

7. A counter affidavit has also been filed on behalf of respondent nos. 5, 10 and 11 in which it has been pleaded that the petitioner has filed the instant writ petition on baseless and ill founded ground for handing over her vacant possession of Shop No. 4 at Naya Bazar, Zila Parishad, Lakhisarai which is claimed by her to have been allotted in the name of her husband, namely, Om Prakash Bihari. It is further pleaded that no document in support of allotment could be produced by the petitioner. Further, the respondent no. 12 widow of late Vimal Kumar contended in a proceeding before Zila Parishad, Lakhisarai that the shop had been allotted in the name of grandfather of her husband and after allotment her husband had been coming in possession of the shop and paying rent accordingly. It is further contended that site was inspected and enquired in which it was found that a third person, namely, Sadhu Saw was running the shop as unauthorized tenant of respondent no. 12. Since no paper of allotment was made



available either by the petitioner or by respondent no. 12 despite demand from the authorities of Zila Parishad in a proceeding, ultimately, after hearing all the parties, the allotment of Shop No. 4 has been cancelled vide Memo No. 38 dated 11.03.2017.

8. It is submitted by the learned counsel appearing for respondent nos. 5, 10 and 11 that neither the petitioner nor respondent no. 12 is legally authorized to occupy the shop in question as they have no paper to show that the shop was ever allotted in their favour and, thus, no relief can be granted to the petitioner in the writ proceeding.

9. I have heard learned counsel for the parties and carefully perused the record.

10. The petitioner has not produced any document in order to support her contention that the shop was ever allotted either in her favour or in favour of her husband. Her husband is alive. The claim of the petitioner is that the shop in question was allotted in favour of her husband. However, the so-called allottee has not filed the writ petition personally. No reason has been assigned by the petitioner as to why the so-called allottee, who is alive, has not approached the court personally. In absence of the claimant in person as also in absence of any valid document, I am of the considered opinion that no relief can be granted to the petitioner in



the instant writ petition.

11. Accordingly, the writ petition is dismissed.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.07.2018
Transmission Date	NA

