

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18035 of 2018

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Ramadhar Somani, Son of Late Dwarika Prasad Somani, resident of- Ward No. 1 (Araria), P.S.+ District- Araria.

.... Petitioner/s

Versus

1. The State of Bihar.
2. District Magistrate, Araria.
3. Sub- Divisional Officer, Araria.
4. Deo Sharan Bhagat, Son of Late Ayodhya Prasad Bhagat
5. Amit Kumar Bhagat @ Tuntun Bhagat, Son of Deo Sharan Bhagat Both residents of Village- Basantpur Bazar, Hatiya Road, Ward No. 24, Araria, P.S.+ District- Araria.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arvind Kumar Jha

For the Respondent/s : Mr. Prashant Pratap- Gp2

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 11-09-2018 Heard Mr. Yogendra Mishra, learned counsel for the petitioner and Mr. learned counsel for the State.

In view of nature of order this Court intends to pass, this Court is neither inclined to adjourn the matter any further, nor to issue notice to Private Respondents Nos. 4 and 5.

The present writ application has been filed for quashing of the order dated 16.01.2018, passed by Respondent No.2, the District Magistrate, Araria, as contained in Annexure-3, whereby, by a cryptic order, the District Magistrate has stayed the order of the Sub-Divisional Officer-cum-Rent Controller, dated 01.12.2017, passed in Case No.1364 MP/2017 under Section 10(2)



of the Bihar Buildings (Lease, Rent and Eviction) Control (Amendment) Act, 1993 (hereinafter referred to as the 'Act'). In the alternative, prayer has also been made for a direction to Respondent No.2, to the District Magistrate, Araria to dispose of the Appeal No. 02 of 2017-18 preferred under the Act within a reasonable time frame.

The factual matrix of the case is that the petitioner entered into a lease rent agreement with late Ram Ayodhya Prasad, the father of Respondent No.4, Deo Sharan Bhagat with regard to shop in question for carrying out business of clothes for a period of 25 years on deposit of Rs.25,000/- as security refundable at the end of the lease tenancy. On expiry of lease, the second lease was entered on 14.09.1996 for further period of 25 years on deposit of Rs.25,000/- as security, refundable at the end of the lease tenancy, which gets reflected from Annexure-1.

The petitioner went outside and on return on 16.04.2017 he found that the construction materials like sand and stone chips were stored in front of the shop of the petitioner, which completely blocked the entry of the shop of the petitioner. Though, a proceeding has been initiated under Section 133 of the Cr.P.C. by Sub-Divisional Officer, Araria for removal of the obstruction made in front of the shop of the petitioner, but the



Respondent No.2 District Magistrate, Araria set aside the order passed under Section 133 of the Cr.P.C. Thereafter, petitioner filed a petition under Section 10(2) of the Act before the Rent Controller, who after notice and hearing the parties vide order dated 11.12.2017 directed the Respondent Nos.4 and 5 to remove the sand and stone chips from the gate of the shop of the petitioner, as contained in Annexure-2 to the writ application. The said order was challenged by Respondent Nos.4 and 5 before the District Magistrate, Araria in Appeal No. 02 of 2017-18 on 09.01.2018 and application was also filed for maintaining status quo by Respondent Nos. 4 and 5 before the Appellate Authority on 16.01.2018 and on the same day the order of stay on the execution of rent controller's order was passed adjourning the matter for 02.02.2018. It appears from the order dated 08.06.2018 that a joint report was called for from the Executive Engineer, Building Construction Department, Araria as well as Executive Officer, Nagar Parishad, Araria but no order was passed. Hence, the present writ application.

Learned counsel for the State submits that a direction may be given for disposal of the appeal.

Considering the fact that the order of the rent controller, as contained in Annexure-2 has been passed on an application



made under Section 10(2) of the Act. Section 10 of the Act stipulates that the landlord cannot interfere with the amenities by the tenant. Section 10 of the Act is an emergency provision. The passage to reach to the shop in question has been blocked that it appears from the Rent Controller's order that the passage to the shop of the petitioner has been blocked in such a way that the petitioner cannot open the gate of his shop, which amounts to interfering with the amenities, as gets reflected from the explanation 2 appended Section 10 of the Act. It appears from the order of the rent controller that after examining the fact that rent lease has not been cancelled, the Respondent No.4 was directed to remove the obstruction from the front of the shop of the petitioner. The order of stay dated 16.01.2018 reflects that it is a most cryptic order which appears to have been subsequently added because part of the order is in Hindi and part of the order is in English which reflects that both the orders have not been recorded by the Appellate Authority. The Appellate Authority has only to examine the validity of the order passed under Section 10 of the Act. It appears that the Appellate Authority is examining the terms of lease agreement, which lends support to the contention of the learned counsel for the petitioner that the Appellate Authority has directed orally to vacate the shop.



In the circumstances, it is expected from the Appellate Authority to dispose of the appeal within a period of three weeks from the date of receipt/production of a copy of this order after giving due notice to the petitioner as well as Respondent nos. 4 and 5 by reasoned and speaking order.

Accordingly, the present writ application is disposed of.

(Dinesh Kumar Singh, J)

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