

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3592 of 2019

-
1. Rajnandan Prasad S/o Late Lakshmi Narayan Srivastava R/o Girija Lakshmi Niwas, Mansarovar Nagar, P.s.-Danapur, Distt.-Patna
 2. Ajay Kumar Srivastava S/o Late Bhuvneshwar Prasad R/o Saket Vihar, Mitra Mandal Colony, P.s.- Gardanibagh, Distt.-Patna
 3. Om Prakash Sinha S/o Binod Kumar Sinha R/o Sushila Sadan, North Shastri Nagar, P.s.-Shastri Nagar, Distt.Patna
 4. Ram Shankar Kumar S/o Late Hari Lal Prasad R/o Punaichak, P.s.-Shastri Nagar, Distt.-Patna
 5. Shambhu Prasad S/o Late Sidheshwar Prasad R/o Gardanibagh, P.s.-Gardanibagh, Distt.-Patna
 6. Vijay Kumar Yadav S/o Late Hari Rai R/o Mohalla-Punaichak, P.s.-Shastri Nagar, Distt.-Patna
 7. Indrajeet Kumar S/o Kanhaiya Singh R/o Village Bansara, P.s.- Dulhin Bazar, Distt.-Patna
 8. Arjun Yadav S/o Late Jogeshwar Yadav R/o Village Damricha, P.s.-Gardanibagh, Distt.-Patna
 9. Shashi Kumar S/o Late Badri Prasad Gupta R/o Village Punaichak, P.s.-Shastri Nagar, Distt.-Patna
 10. Nilu Devi W/o Dr. Devendra Prasad R/o Village Dakriya, P.s.- Gardanibagh, Distt.-Patna
 11. Nawal Kishore S/o Late Hari Rai R/o Punaichak, P.s.- Shastri Nagar, Distt.-Patna

... .. Petitioners

Versus

1. The State of Bihar through Principal Secretary, Deptt. of Urban Development, Govt. of Bihar, Patna
2. The Principal Secretary Department of Urban Development Department, Govt. of Bihar, Patna
3. The Secretary Building Construction Department, Govt. of Bihar, Patna
4. The District Magistrate Patna
5. The Sub Divisional Officer Patna Sadar, Patna
6. Patna Municipal Corporation through its Commissioner Maurya Lok, Patna
7. Commissioner Patna Municipal Corporation, Maurya Lok, Patna
8. The Sub-Divisional Officer, Patna City- Cum-Special Officer, Bihar State Marketing Board (Dissolved) Musalampur, Patna.

... .. Respondents

Appearance :

For the Petitioner/s : Mr.Naresh Dikshit, Advocate



For the State : Mr.Sumit Shekhar Pandey, Advocate
Ms. Vaishavi Singh, Advocate
Ms. Kalpana, Advocate
Mr.Kinkar Kumar (SC-9)
Mr.Zaki Haidar, AC to SC-9

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

4 21-11-2019 Heard learned counsel for the petitioners and learned
counsel representing the State.

Petitioners in the present case are looking for a writ in the nature of mandamus commanding the respondents not to dispossess them from their possession of the shops situated at Mangles Road, Opposite New Secretariat Area, Patna which are said to have been leased out to them by the erstwhile Bihar State Marketing Board (now dissolved) (hereinafter referred to as the 'Marketing Board').

During pendency of the writ application the petitioners have filed I.A. No. 1 of 2019 seeking quashing of the notices issued to petitioners no. 1 to 11 by the Sub-Divisional Officer, Patna City-cum-Special Officer, Bihar State Marketing Board (Dissolved), Mussalahpur, Patna by which they have been called upon to vacate the shop premises and in case they failed to vacate the premises within a period of 48 hours then why appropriate action be not taken against them to evict them from the premises.

This Court sitting in its writ jurisdiction under Article



226 of the Constitution of India is not going into the various submissions which have been raised on behalf of the petitioners with respect to their rights to continue in the shop premises as it will be open for the petitioners to demonstrate their case with regard to their right and entitlement to remain in possession of the shops before the competent authority of the Marketing Board and/or before any other competent court or forum where such issue may be raised or arise.

This Court would, however, confine its consideration with respect to the procedures which the respondents have adopted for evicting the petitioners from the shop premises. Respondent No. '8' has in his counter affidavit stated that the shops were established in the year 1982 and allotments were made to various persons. The Bazar Samiti is responsible for the collection of rent as per the agreement executed at that period of time with the concerned shops.

It is the case of respondent no. '8' that the lease was initially executed for a period of '11' months from the date of commencement of the lease and thereafter, it has never been renewed. The stand of respondent no. '8' is that the shops in question are being run in complete violation of the agreement and at this stage it has been found that the land belongs to the



Bihar State Building Construction Department. In this regard a request has been made by the Executive Engineer, Central Division, Building Construction Department, Patna vide his Letter No. 4785 dated 20.08.2019 to the Marketing Board for handing over the land in question to the Department.

With the counter affidavit the respondent no. '8' has brought on record Annexure 'R8/C' by which the allotments made in favour of the petitioners/shopkeepers have been cancelled. A reading of Annexure 'R8/C' shows that there are allegations of breach of terms and conditions of lease against these petitioners. After cancelling the allotment, the petitioners have been called upon to vacate the shop premises within a period of 24 hours.

Learned counsel for the petitioners has shown from the materials available on the record that these petitioners entered in the shop premises pursuant to the allotment made in their favour by the erstwhile Marketing Board and thereafter they have continuously paid the rent of the shops in question. In Paragraph '4' of the writ application categorical statements have been made showing the period for which the petitioners have paid rent in respect of their respective shops.

It is the contention of learned counsel for the



petitioners that on 10th January, 2019 the District Administration visited the shops area and directed the petitioners to close their venture since government is going to make use of said area for other purposes and the petitioners have been orally ordered to vacate the place, failing which they shall be forcefully thrown out by demolishing their shops.

Learned counsel for the State has submitted that the shops in question were built by the Marketing Board on the land of the Building Construction Department and at this stage the department has called upon the Marketing Board to handover its land, thereafter the Marketing Board having found that the petitioners are continuing in violation of the terms of lease/allotment proceeded to cancel the allotment and called upon the petitioners to vacate the shop premises. Learned counsel submits that in future the government has planned to take different project over the land in question.

Having heard learned counsel for the petitioners and on careful perusal of the records, this Court finds that the relationship between the erstwhile Marketing Board and the petitioners are not in dispute. The Marketing Board had constructed the shops and had made allotment in favour of the petitioners, pursuant to which the petitioners have entered into



the shop and thereafter, they claim continuing in possession for about 40 years approximately. They have come out with a specific statement that they are making payment of rent in respect of the shops. The payment may not be up-to-date but after expiry of the lease period payments have been made which have been accepted by the Administrator who is none else but the Sub-Divisional Officer, Patna City.

Be that as it may, if it is the case of the Marketing Board that for alleged violation of the terms and conditions of the lease deed, action towards cancellation of allotment of shops have been taken, this Court finds no fault with initiation of such action. The petitioners may, if so advised, challenge the action of the Marketing Board in cancelling their respective allotment in an appropriate proceeding before an appropriate court of law.

This Court would, however, say that the District Administration cannot demolish the shops and use any force against the petitioners to evict them from the shops in question unless such order of eviction and a direction to provide police force to help the Marketing Board in evicting the petitioners is passed by a competent authority/court after hearing the petitioners and in accordance with law.

This Court has been told that the premises in question



would come within the meaning of the public premises as defined under the Public Premises Eviction of Unauthorized Occupants Act, 1971 (hereinafter referred to as the 'Act of 1971'), if it is so, it will be open for the respondent authorities to proceed against the petitioners under the provisions of the Act of 1971 and take the proceeding to a logical end.

This writ application stands disposed off with aforesaid observations and directions.

(Rajeev Ranjan Prasad, J)

vats/ved

U			
---	--	--	--

