

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3272 of 2019

1. Arun Kumar Srivastava, aged about 62 years (Male), S/o- Lae Pashupati Nath Verma R/o- Mohalla-Bhawanipur Zirat, P.o. and P.s.- Chhatauni, District-East Champaran.
2. Nidhi Bala, aged about 44 years (Female), w/o- Late Raj Kumar Sinha R/o- Mohalla-Bhawanipur Zirat, P.O. and P.S.-Chhatauni, District-East Champaran.
3. Parwez Alam, aged about 35 years (Male), Late Md. Yunis R/o- Mohalla-Bhawanipur Zirat, P.o. and P.s.-Chhatauni, District-East Champaran.
4. Abdul Majid, aged about 35 years (Male), S/o- Md. Hasim R/o- Mohalla, Vill-Khodanagar, P.o. and P.s.-Chhatauni, District-East Champaran.
5. Md. Sallauddin, aged about 36 years (Male), S/o- Late Nek Mohammad R/o- Mohalla-Khodanagar, P.o. and P.s.-Chhatauni, District-East Champaran.
6. Shankar Prasad, aged about 60 years (Male), S/o- Banwari Prasad Mohalla-thakurbari, Ward.no-11, P.O- and P.S.- Motihari, East champaran
7. Md. Nasim, aged about 28 years (Male), S/o- Late Jumai Mistri R/o- Mohalla-Khodanagar, P.o. and P.s.-Chhatauni, District-East Champaran.
8. Mukesh Kumar, aged about 52 years (Male), S/o- Ramchandra Prasad R/o- Mohalla-Khodanagar, P.o. and P.s.-Chhatauni, District-East Champaran.

... .. Petitioners

Versus

1. The State of Bihar
2. The District Magistrate Motihari, East Champaran
3. The Zila Parishad, Represented by Chief Executive Officer Zila Parishad , Motihari, East Champaran
4. The District Development Commissioner Zila Parishad, Motihari, East



Champaran

5. The Chairman Zila Parishad, Motihari, East Champaran.
6. Kedar Nath Singh S/o- Late Bhola Singh R/o- Mohalla- Gayatri Nagar,P.O. and P.S.- Motihari Town, District- East Champaran.
7. Asha Devi W/o- Kedar Nath singh R/o- Mohalla- Gayatri Nagar,P.O and P.S- Motihari Town, District- East Champaran.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr.Pravin Kumar, Advocate
For the Resp. No. 6 & 7	:	Mr. Nividita Nirvikar, Advocate
For the Zila Parishad	:	Mr. Sanjay Kumar, Advocate
For the State	:	Mr. Alok Kumar (SC7)

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2. 26-06-2019 Heard learned counsel for the petitioners,

learned counsel representing the State, learned counsel for

the Zila Parishad and private respondent nos. 6 & 7.

Petitioners, in the present case, have moved this court for a direction to the respondents not to make any construction over an area of 1650 Sq. ft. from Arun Radio Service to Late Jamui Mistri Shop and 2025 Sq. ft. from Md. Danis (Hi-Tech Mobile to Shankar Prasad Shop) on the 1st floor of the constructed ground floor shop.

It is the case of the petitioners that earlier they were allotted the land by the Zila Parishad, East Champaran for construction of shops on their own cost.



After such allotments were made the petitioners constructed their respective shops and are peacefully coming in possession over the shops and running their business.

Earlier when the Zila Parishad wanted to settle the roof right of the shops, one Muzaffar Mahmood had moved this court in CWJC No. 10026/2006 with a prayer to direct the respondents not to make any construction over an area of 1500 square feet of First Floor of Khesra No. 2754 situated at Meena Bazar Chowk, Motihari within the district of East Champaran. The said writ application was disposed of by a learned co-ordinate Bench of this court vide order dated 04.12.2006 (Annexure '5') with a direction to the Deputy Development Officer cum Chief Executive Officer, Zila Parishad, East Champaran, Motihari to consider the representation of the petitioner after sending a fresh notice to the persons concerned and after giving them opportunity to place their respective cases. The said authority was directed to dispose of the matter by



speaking order in accordance with law expeditiously.

After the order dated 04.12.2006 was passed, the concerned authority while examining the records for purpose of proceeding with the matter found that the settlement made in favour of the private respondent no. 7 and others were liable to be cancelled because all the applicants had not been called and offers were not invited from other shopkeepers. Vide order dated 06.07.2007 (Annexure '6') the Deputy Development Commissioner cum Chief Executive Officer, Zila Parishad therefore cancelled the settlement order issued in favour of the private respondent no. 7 and others.

Thereafter, it appears that the respondent no. 7 remained waiting for further action to be taken by the authorities concerned towards settlement but when no action was taken she moved this court in CWJC No. 9106/2007 which was disposed of allowing the petitioner (present respondent no. 7) to move before the authorities concerned for making claim towards refund of the amount which was deposited by her in lieu of the settlement dated



31.08.2005 and also for refund of the amount which petitioner had invested towards certain construction made upon the settled area. The concerned respondents were accordingly directed to pass speaking order on merit on the claim of the said petitioner.

This court however made it clear that this order would not preclude the petitioner from participating in any fresh proceeding for settlement of the concerned area in case such occasion arises in view of the order dated 02.07.2007 passed by respondent no. 5 as contained in Annexure '9' to the writ application.

It appears that thereafter advertisement in terms of Annexure '1' to the writ application was issued calling upon the interested persons to participate by submitting application to get settlement of the roof of the shops standing on four different places within the Motihari urban area.

These petitioners did not participate in the settlement. The private respondents however participated and and were ultimately allotted the floor right on the first



floor to make temporary constructions thereon.

From Annexure '1', it appears that applications were invited from the public at large between 10.05.2017 and 25.05.2017, it is not the case of the petitioners that they were not aware of the public notice as contained in Annexure '1' to the writ application. From the narrations in the writ application, this court finds that the petitioners do not dispute the right of the Zila Parishad to settle the roof right to any other person. No material has been brought on the record before this court to demonstrate that these petitioners who are having shops had got any preferential right under any agreement with the Zila Parishad to get offer of allotment of shops before inviting the public at large for such settlement. At this stage, when the settlement have already been made, the agreement have been executed approximately two years back, the petitioners have moved this court for a mandamus directing the respondents not to make any constructions over the settled area. Neither the advertisement was challenged at any stage in accordance with law nor the



settlement is being contested on any other ground if any arising from Annexure '5' to the writ application.

The writ application rather gives an impression that the complaint of the petitioners is that they should have been given some preferential rights in the matter of the settlement. At one stage a dispute was also raised with regard to stipulations in the public notice giving an impression that it is vague, however, in course of argument, it transpired that the public notice clearly provides that within Motihari urban area at least on four places the upper part (floor area) of the shops of the Zila Parishad were going to be settled.

Learned counsel for the petitioners has though reiterated what have been stated in the writ application, this court is of the considered opinion that at this stage after about two years of the advertisement and the settlement made in favour of the private respondents the petitioners cannot be granted reliefs prayed in the writ application by restraining the respondents from making construction over the settled area. The principles of delay



and laches would also come into play in the present case in the context of the case when this court finds that the advertisement issued in the year 2017 by which people were invited to participate in the settlement process was not under challenge at any stage. If the petitioners did not challenge the advertisement and allowed the things to proceed resulting in settlement of the floor area of the private respondents, then, at this stage, the delay is such that the petitioners have made themselves dis-entitled for the relief prayed in the writ application.

The writ application is, accordingly, dismissed.

(Rajeev Ranjan Prasad, J)

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