

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13507 of 2019

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Srikant Singh Son of Late Ram Dayal Sharma, Proprietor M/s Maurya Nursery opposite Basant Vihar, Maurya Lok complex, Patna at Present resident of Sai Sah Regency, Flat no. - 01, Kajipur, P.s.- Kadamkuan, Dist.- Patna. Petitioner

Versus

1. The Patna Municipal Corporation Maurya Lok Complex, P.s.- Kotwali, town and Dist.- Patna through its Municipal Commissioner.
2. The Deputy Municipal Commissioner, Municipal Corporation, Maurya Lok Complex, P.s.- Kotwali, Town and Dist.- Patna.
3. The Director, Patna Municipal Corporation, Maurya Lok Complex, P.S.- Kotwali, Town and Dist.- Patna.
4. The Estate Officer, Patna Municipal Corporation, Maurya Lok complex, P.s.- Kotwali, Town and Dist. - Patna.
5. The Executive Engineer, Patna Municipal Corporation, Maurya Lok Complex, P.s.- Kotwali, Town and Dist.- Patna.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr.Binod Kumar Sinha, Advocate Mr. Alok Kumar Chaudhary, Advocate
For the Respondent/s	:	Mr.Prasoon Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

C.A.V. JUDGMENT

Date : 18-11-2019

This writ application has been preferred seeking a writ in the nature of Mandamus commanding the respondent authorities to grant permission for the restoration of the grill as well as Semi glazed partition, transparent shelf of the petitioner which have been allegedly demolished by the respondent authorities.

It is the case of the petitioner that vide Letter No. 1456 dated 28.05.2002 as contained in Annexure '1' to the writ application, the then Estate Officer, Patna Regional Development



Authority (hereinafter referred to as the 'PRDA') had granted permission to the petitioner to maintain the Park situated in front of Vasant Vihar shop in the premises of Maurya Lok Complex. The permission was granted to the petitioner to maintain the Park on his own cost. The petitioner was, however, permitted to sale plants and related materials on no profit-no loss basis in order to keep the environment free from pollution. It was, specifically provided as a condition in the permission letter that the petitioner shall not indulge in any commercial activities for monetary gain and for that purpose the Park shall not be used. In terms of Clause '6' of the permission letter, the then 'PRDA' had reserved its right to withdraw the maintenance work from the petitioner by giving him one month prior notice. The petitioner was, however, permitted to put the signboard of his organization in the Park upon approval of the 'PRDA'.

In the writ application, the petitioner claims that he had sought permission from the Executive Engineer, PRDA for putting a semi glazed partition and transparent shelf as well as to raise height of grill in order to keep safe the flowers and the plants as also to save them from the sunburn. By Annexure- '3' to the writ application vide Letter No. 2345 dated 27.10.2003 the petitioner was permitted to put grills temporarily under the guidance of the



Executive Engineer (Incharge of Maurya Lok). It was further stated in Annexure '3' that the 'PRDA' may remove grill without any notice.

The petitioner claims that he had developed the Nursery in the Park in order to maintain the environment eco-friendly he had put the grill, costly equipments and stored plenty of plants in the Park worth Rs. 4.50 lacs. It is alleged that while taking action against some of the KIOSK, allegedly constructed in the Maurya Lok Commercial Complex in the set-back area, the respondent authorities started demolition of those KIOSKs and while doing so they also removed the grill of the nursery from the western side and after removal of the grill, all the equipments, costly plants and materials lying in the Park have been allegedly stolen away by the unknown persons. The petitioner submits that he had gone to his village to do some cultivation work and when he came back, he found that the western side gate of the nursery has been removed by the demolition team headed by the Deputy Municipal Commissioner, Patna Municipal Corporation (hereinafter referred to as the 'Corporation').

The action of the respondent authorities has been challenged on the ground of violation of principles of natural justice. It has been contended in the writ application that by removing the grill of the Park, the respondent authorities have virtually thrown out an unemployed educated person on the road and he has been



compelled to face starvation along with his family members. In paragraph '15' of the writ application, the petitioner has asserted that he had been running his business for livelihood in the said Park for a long time.

A counter affidavit has been filed on behalf the respondents. It is the case of the respondents that the persons who were allotted shops around the Vasant Vihar at Maurya Lok Commercial Complex were requesting the authorities for making available some parking space for vehicles. Considering the practical difficulties being faced by the customers, a decision was taken to develop the space where the Park was situated as a parking space and accordingly, the work was started for construction of the parking space which has almost been completed. Relying upon the terms and conditions contained in Letter No. 1456 dated 28.05.2002 (Annexure '2' to the writ application), it has been contended that the 'PRDA' had reserved its right to do any work of development or construction in the Park without giving any notice to the petitioner, therefore, the petitioner should not have any grievance if the respondent authorities have taken decision to develop the Park in a parking space.

The respondents have submitted that in the letter dated 28.05.2002 the permission was granted only for maintenance of the Park but the petitioner has wrongly submitted that he was permitted to construct a transparent shelf and semi glazed partition. It is further



submitted that the petitioner is not concerned with the issues relating to demolition of 'KIOSK' and the fact that the petitioner had no right to continue in the Park and indulge in commercial activities as also that the maintenance work was given to the petitioner with a clear stipulation that he may be removed any time, if the respondent authorities have decided to proceed with the construction of parking space in the Park, no fault may be found with the action of the respondent authorities. It is submitted that after removal of the grill, the petitioner had himself taken away the said grill.

In his rejoinder the petitioner has come out with a statement in paragraph '5' that the petitioner was permitted to use the Park on the basis of no profit-no loss and the said term has not been violated by the petitioner. He has now submitted that the petitioner has not indulged in any commercial activity in the Park.

Having heard learned counsel for the petitioner and learned counsel for the respondents as also on a careful perusal of the materials available on the record, this Court finds that the petitioner was granted permission vide Annexure '1' to the writ application only to maintain the Park on his own cost in terms of Clause '3' of Annexure '1'. The petitioner was not permitted to raise any structure and counter for purpose of sale of flowers and plants and further it has been clearly provided in Clause '4' that he would not indulge in any commercial activities. The petitioner was only permitted to sale



the plants and related materials on no profit and no loss basis in order to keep the environment pollution free. The then 'PRDA' had reserved its right to carry any other developmental work or construction in the said Park without any notice to the petitioner. The only permission which the petitioner was granted as a *quid pro quo* that and he was permitted to put the signboard of his organization as approved by the 'PRDA' for purpose of advertising his organization.

It is evident from the materials available on the record that the respondent authorities decided to develop the parking space in the said Park. Once they decided to develop the parking space in the said Park, they proceeded to remove the grill but before removal of the grill, no notice was given to the petitioner calling upon him to remove the flowers and plants as also other materials which he might have stored inside the Park.

This Court is of the considered opinion that while no fault may be found with the decision of the respondent authorities to proceed with the development of the Park as a parking space, in all fairness and fair play in action, it was incumbent upon the respondent authorities to give atleast one notice by way of information to the petitioner in terms of Clause '6' of letter No. 1456 dated 28.05.2002 (Annexure '1') calling upon him to remove all his flowers and plants which he might have stored for purpose of sale.



It is not the scope of consideration in this writ application as to whether the petitioner was selling the flowers and plants and other materials for his monetary gain or was selling those plants on no profit and no loss basis because it is not the case of the respondent authorities that the permission granted to the petitioner has been withdrawn on account of violation of any of the terms and conditions of the permission letter as contained in Annexure '1' to the writ application. It is an admitted position that in terms of Clause '4' of the permission letter, the petitioner was permitted to sale the flowers and plants as also other materials on no profit and no loss and there is a possibility that during his long period of stay of about 17 years in the said Park he must have stocked flowers/plants and other materials of a considerable value, in counter affidavit, there is no denial of these facts, therefore, this Court would reiterate that the respondent authorities should have shown some sense of responsibilities while removing the grills. The action of the respondent authorities seems to have taken place in violation of principles of natural justice and such action of the respondent authorities are required to be deprecated. It is well said that the principles of natural justice is like a brooding omnipresence which prevails everywhere. The action of the respondent authorities are therefore, to the extent indicated above is definitely an illegal action in haste.



Having said so, now the question arises as to whether in the given facts and circumstances of the case, this Court may direct the respondent authorities to restore the grill and put the petitioner in the same position in which he was prior to demolition of the grill ?

This Court is of the considered opinion that the petitioner has not acquired any right to continue with the maintenance work of the Park. The respondent authorities had reserved their right to proceed with any construction and developmental work in the said Park. Now in terms of their own decision if they are proceeding to construct a parking space in the said Park, this Court would not direct them to restore the grill. The respondent authorities have made a categorical statement that in fact the construction of parking has almost been completed.

As regards the loss to the extent of the value of Rs. 4.5 lacs, it is the case of the petitioner that after removal of the grill of the Park, the plants and other related equipments kept inside were stolen away by some unknown persons. It is not his definite case that the respondent authorities have taken away the plants and machineries. Whether the plants and machineries worth Rs. 4.5 lacs were stolen away by unknown persons would require an investigation in the matter, the petitioner would be required to prove from the evidence which may be adduced before a competent court of law that he had in fact stored plants and equipments worth Rs. 4.5



lacs which were stolen away because of the illegal removal of the grill. It is only on such proof that the petitioner may be entitled for his claim on account of the loss caused to him due to the alleged act of removal of grill by the respondent authorities.

In the opinion of this Court, sitting in its writ jurisdiction under Article 226 of the Constitution of India, this Court cannot record a finding as to the value of the plants and equipments which the petitioner might have stored inside the Park. In an appropriate case, there is no fetter for a constitutional Court to award compensation, in the facts of the present case, this Court, refrains from entering into this aspect of the matter and leave it open for the petitioner to seek his remedy before a competent court in an appropriate jurisdiction.

In the totality of the circumstances, although this Court would not award any compensation to the petitioner for the alleged loss, this Court is of the considered opinion that the action of the respondent authorities having been found in haste in the matter of removal of grill without any information to the petitioner and without giving any opportunity to him to remove the plants and equipments compelling the petitioner to rush this Court, the respondent authorities have made themselves liable to pay atleast the cost of litigation in the present case which in the facts and circumstances of the present case is assessed at Rs. 25,000/- (twenty



five thousand). The cost of litigation shall be paid to the petitioner within a period of 30 days from the date of receipt/production of a copy of this order. The cost which the respondent Corporation has been made liable to pay, may be realized from the erring officials.

This writ application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

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AFR/NAFR	
CAV DATE	05.11.2019
Uploading Date	18.11.2019
Transmission Date	

