

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8436 of 2020

=====

Mohammed Jawaaid Khan Son of Mohammed Seraj Uddin Khan Resident of
ALN Road near Masjid, Murarpur, Gaya, Bihar, 823001- Business.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Department of Urban Development and Housing, Government of Bihar, Patna.
2. The Municipal Commissioner Gaya Municipal Corporation, Gaya.
3. The Sub Divisional Officer Sadar, Gaya.
4. The Senior Superintendent of Police Gaya.
5. Mohammed Sarfaraz Khan Son of Late Seraj Uddin Khan Resident of Mohalla Nagmatia Colony, Road No. 1, Police Station- Civil Line, Town and District- Gaya.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. J.S. Arora, Sr. Advocate
For the Respondent/s	:	Mr. Shankar Kumar, Advocate
For the Respondent No. 2:	:	Mr. Rabindra Priyadarshi, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 11-12-2020

Heard Mr. J.S. Arora, learned Senior Advocate for the petitioner, Mr. Shankar Kumar, learned Advocate for the State and Mr. Rabindra Priyadarhi for the respondent no. 2 viz. Gaya Municipal Corporation, Gaya.

2. The petitioner has approached this Court against the order dated 31.08.2020 (Annexure-11) as also the letter dated 16.09.2020 (Annexure-15) which is, in the estimation of the petitioner illegal, unlawful, without jurisdiction and not sustainable in the eyes of law.

3. The order impugned reflects that in obedience to the order passed by a Bench of this Court, the signatory of the order has proceeded for evicting the petitioner from



Shop No. 10 in Gani Market, Gaya for his being an encroacher in the aforesaid shop.

4. In the first instance, this Court is of the view that the petition is highly misconceived.

5. In order to justify the aforesaid statement, certain facts are required to be stated.

6. Admittedly, the petitioner was allotted Shop No. 15 in Gani Market, Gaya by the Gaya Municipal Corporation and the petitioner started paying rent for the shop. However, he was in a look-out for an additional shop because of the increase in the volume of business. As a matter of coincidence, Shop No. 15 was vacated by the allottee and thereafter, the petitioner, on being assured by the Corporation, shifted in Shop No. 15 and started paying rent for the same.

7. The rent receipts with respect to Shop No. 10 has been used as an evidence by the petitioner to claim that he is the allottee of Shop No. 10 also.

8. In the meantime, an elder brother of the petitioner, who claims to be an allottee of the said premise of the Shop No. 10, entered into litigation with the petitioner.

9. A title suit is stated to have been filed by the petitioner against Gaya Municipal Corporation as well as Respondent No. 5 with a request for grant of injunction during the pendency of the suit. The Respondent No. 5 is



also stated to have approached the High Court *vide* C.W.J.C. No. 3749 of 2015, seeking a mandamus against the Municipal Corporation to hand over the possession of Shop No. 10 to him as he is the rightful allottee.

10. In the aforesaid case, the petitioner has lamented that he was not made a party.

11. This Court passed an order directing the Town Commissioner, Gaya Municipal Corporation to consider the grievance of Respondent No. 5 in the light of the orders passed and the agreement executed and dispose of the representation of Respondent No. 5 as expeditiously as possible.

12. It was in this context that the petitioner was noticed by the Gaya Municipal Corporation for vacating Shop No. 10 and an attempt also was made to evict the petitioner from the said shop premises as he was never the allottee of that shop.

13. The petitioner, however, had filed a writ petition before this Court challenging the notice of eviction (C.W.J.C. No. 2888 of 2016) but the same was dismissed as no case was made out by the petitioner. In the Title suit filed by the petitioner, *viz.* Title Suit No. 138 of 2015, an application was filed by respondent no. 5 for a direction to the Gaya Municipal Corporation for delivering the possession of Shop No. 10 to him. The aforesaid application was contested. The Trial Court directed that the



Corporation was under an obligation to act as per the order of the court dated 15.10.2015 passed in C.W.J.C. No. 3749 of 2015. The respondent no. 5 is also in possession of rent receipts of the shop which obviously appears to have been accepted by the Gaya Municipal Corporation without caring for the pending litigation.

14. The Gaya Municipal Corporation had also preferred a Title suit for eviction against the petitioner in the year 2018, in which the prayer was for recovery of possession from the petitioner a decree of an amount of Rs. 43,200/- as damages incurred in the preceding years as well as the cost of the suit.

15. Mr. Priyadarshi, at this stage, has informed this Court that an application now has been filed for withdrawal of the aforesaid Title Suit by the Gaya Municipal Corporation. In fact, this information has been provided by the petitioner also in his writ petition.

16. Thereafter, the Gaya Municipal Corporation candidly expressed that respondent no. 5 is not in possession of Shop No. 10 and, therefore, no rent is required to be exacted from him.

17. At this stage, it is observed that if 'X' is not held to be a tenant of a premises, that does not *ipso facto* mean that 'Y' who has been litigating for the possession of the premises is to be considered as the rightful allottee.



18. Against the aforesaid declaration of the Gaya Municipal Corporation about respondent no. 5 not being the allottee of Shop No. 10, respondent no. 5 preferred a contempt petition before this Court, which was disposed of by holding that the contempt petition is not made out and if at all the respondent no. 5 was aggrieved by any order of the Corporation, that could have been questioned in an appropriate proceeding before an appropriate forum.

19. It is the case of the petitioner that despite all this, at the instance of respondent no. 5, the Gaya Municipal Corporation has been active in getting the petitioner forcefully evicted from Shop No. 10 which according to the learned counsel for the petitioner is illegal in view of pendency of the Eviction suit and the Title suit preferred by the petitioner which has yet not attained finality.

20. Today, the grievance of the petitioner is that not only Shop No. 10 but Shop No. 15 of which the petitioner was the original allottee has also been sealed and locked without any authority of law.

21. If at all the petitioner had any grievance against locking of Shop No. 15, that should have been the first prayer before this Court.

22. In any view of the matter, considering the aforesaid background and the pendency of the Title suit, it is only expected that the Gaya Municipal Corporation would



abide by the rules of law with respect to eviction of the petitioner from the shop of which he has never been the allottee.

23. It is really surprising to note that neither the petitioner nor the respondent no. 5 were ever the allottees of Shop No. 10. In that situation, the Gaya Municipal Corporation also cannot be given a clean chit for having accepted rents from the petitioner as also from respondent no. 5.

24. However, delving into the aforesaid aspects would unnecessarily expand the mandate of the present writ petition which this Court is not inclined to do at the moment.

25. All that this Court declares that this petitioner has got no right over the premises of Shop No.10 of which he was never the allottee and for which a claim has been staked only on the basis of certain rent receipts which were illegally accepted by the Corporation.

26. In the event of the Eviction suit having been withdrawn, a proper proceeding be initiated and expedited against the petitioner for his eviction from Shop No. 10.

27. So far as the Shop No. 15 is concerned, the petitioner would be at liberty to approach the Town Commissioner, Gaya Municipal Corporation within a period of one week for unlocking of the premises as there is no



cloud or dispute over his being the allottee of the aforesaid premises of Shop No. 15.

28. The petitioner would be at liberty to approach the Town Commissioner, Gaya Municipal Corporation and make a request for unlocking/de-sealing of Shop No. 15 of which he is the original allottee and would remind the authority that rule of law has to be followed in every aspect of administration and even if the petitioner is not found to be the rightful occupant of the property, he could be evicted only by taking resort to the rules in that regard.

29. If it is found by the Town Commissioner, Gaya Municipal Corporation that there is no justification for putting up lock in the premises of Shop No. 15 of which the petitioner is the original allottee, it would be de-sealed without any delay.

30. The writ petition stands disposed of with the aforesaid direction/observation.

(Ashutosh Kumar, J)

krishna/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.12.2020
Transmission Date	NA

