

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19359 of 2016

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Avanish Kumar Singh son of Late Vindhyachal Singh, resident of Village Jihuli, P.S.- Patahi, District East Champaran at Motihari presently residing at Mohalla Choudhary Tola Ganga Vihar Colony P.S.- Sultanganj, Town and District- Patna.

... .. Petitioner

Versus

1. The State Of Bihar through the Principal Secretary, Building Construction Department, Government of Bihar, Bailey Road, Patna.
2. The Secretary, Building Construction Department, Bihar, Patna.
3. The Executive Engineer, Tax Division Building Construction Department, Bihar, Patna.
4. The Estate Officer, Building Construction Department, Bihar, Patna.
5. The Secretary, Bihar Legislative Assembly, Patna.
6. The Additional Secretary, Bihar Legislative Assembly, Patna.
7. The Secretary, Bihar Legislative Council, Patna.
8. The Additional Secretary, Bihar Legislative Council, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner	:	Mr. Vijay Kumar, Advocate
For the State	:	Mr. Mahendra Prasad Verma AC to SC-20
For the respondents No 7 & 8	:	Mr. Kaushal Kumar Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 13-01-2021

Heard learned counsel for the petitioner and the respondents.

2. The writ petitioner has sought quashing of letter dated 24.08.2016 issued by the Executive Engineer, Tax Division, Building Construction Department whereby and whereunder there is an order for deduction of a sum of Rs. 20,98,757/- (Twenty Lakhs Ninety Eight Thousand Seven Hundred and



Fifty Seven) only as house rent from the petitioner. The same has been issued pursuant to the directive of the Estate officer dated 20.07.2006. The demands have been made in view of the fact that the petitioner overstayed in a Government accommodation allotted to him in his capacity as Member of the Bihar Legislative Assembly. The petitioner claims that though he had resigned from membership of the Assembly he was entitled to retain the accommodation in his capacity as Member of the State Legislature Research and Training Bureau (Rajya Vidhayee Adhyayan and Prasikshan Bureau).

3. Counter affidavit and rejoinder has been filed in the instant proceeding. On completion of the pleadings, it appears that earlier also the petitioner had approached this Court by filing a writ petition seeking quashing of letter dated 21.09.2015 whereby and whereunder rent 14,14,118 (Fourteen Lacs Fourteen Thousand One Hundred Eighteen), being the amount outstanding till that date for overstaying in the same government accommodation was demanded. The same was numbered as CWJC No. 19237 of 2015.

4. Writ petition bearing CWJC No. 19237 of 2015 was withdrawn by the petitioner on 06.01.2016. The order of the Court reads as follows:-

“Mr. Manoj Kumar Singh, counsel for the petitioner in presence of the counsel for the respondents seeks permission of the Court to withdraw this writ application. There being no objection by the respondents, the writ application is dismissed as withdrawn.”

5. Admitted facts emerging from the pleadings is the



petitioner has also raised the same issue in Civil proceedings bearing Title Suit No. 03 of 2016. Certain orders of status quo were passed in the said proceedings. The same was assailed by the State by filing Misc. Appeal No. 14 of 2016 before the learned District Judge, Patna. On 18.4.2016, the learned District Judge, Patna remanded the matter back for fresh hearing. The petitioner has already vacated the government accommodation and shifted in his newly constructed house.

6. Neither the State nor the petitioner has placed on record the further developments after remand of the matter by the Appellate Court in Misc. Appeal No. 14 of 2016. This Court, therefore, would not express any opinion on the merits of the matter.

7. This Court, however, would observe that the demand of rent on account of the same reason, being overstayed in the same government accommodation, however, in respect of an amount calculated till an earlier date was challenged by the petitioner in CWJC No. 19237 of 2015 which was unconditionally withdrawn by the petitioner. In between the two writ petitions only the quantification of rent varies. Such variation in the quantification /amount of rent is occasioned only due to lapse of time in the meantime. In the instant case, the amount is greater as it has been calculated till the date of filing of the instant writ petition. The issue, however, is one and the same; whether the petitioner would be liable for paying rent in respect of the same government accommodation on account of overstayed since he ceased to be a Member of the Assembly subsequent to his resignation dated 14.3.2014. The earlier writ petition, wherein, the petitioner had raised an issue that he would not be liable to pay the rent has been withdrawn without any liberty. This Court



has no hesitation in holding that the petitioner is estopped from filing a second writ petition, having waived his opportunity to assail the decision by withdrawing the earlier writ petition unconditionally.

8. Considering maintainability of a second writ petition, under Article 226 of the Constitution of India, in similar circumstances, the Apex Court, in the case of ***Joint Action Committee of Air Line Pillots' Associations of India (for brevity ALPAI) and others vs. Director General of Civil Aviation and others*** reported in ***(2011) 5 SCC 435*** has expressed its disapproval to filing of a second writ petition for the same relief after withdrawing the earlier writ petition without even reserving the right to file a fresh writ petition.

9. In the said writ proceedings, petitioners had submitted that Aeronautical Information Circular (for brevity, AIC) No 28 of 1992 was the most scientific and properly formulated directions and that the impugned amendment of CAR of 2007 was based on a draft which had shocking deviations and selective exclusion from safety reasons which was adopted and accepted internationally.

10. The Authorities, in the said case, were directed to maintain status quo with respect to the Flight Time and Flight Duty Time Limitation as on June, 2007. The petitioners, thereafter, submitted that the grievance had already been redressed and they do not wish to pursue the writ petition. The same was withdrawn.

11. Since the earlier writ petition wherein the CAR of 2007 was challenged was withdrawn by the writ petitioners without even reserving their right to file a fresh petition



challenging the same, filing of fresh writ petition, for the same relief was not found worthy of approval by the Apex Court on the principles of waiver and estoppel.

12. This Court would consider it useful to reproduce paragraphs 12 and 13 of judgment of the Apex Court in the case of ***Joint Action Committee of ALPAI (supra)***:

“12. The doctrine of election is based on the rule of estoppel – the principle that one cannot approbate and reprobate inheres in it. The doctrine of estoppel by election is one of the species of estoppels in pais (or equitable estoppel), which is a rule in equity. By that law, a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had. Taking inconsistent pleas by a party makes its conduct far from satisfactory. Further, the parties should not blow hot and cold by taking inconsistent stands and prolong proceedings unnecessarily.

13. In view of the above, it is clearly evident that some of the present appellants had challenged CAR 2007, wherein it had been submitted that AIC 28 of 1992 was based on better scientific studies. The same remained in operation for more than 17 years and no one had even raised any grievance in respect of its contents or application. However, it appears that during the pendency of the said writ petition, grievance of those petitioners stood



redressed and, thus, they withdrew the writ petition. They did not even ask the court to reserve their right to file a fresh petition challenging the same, in case the need arose, as required in the principle enshrined in Order 23 of the Code of Civil Procedure, 1908. Such a conduct of those appellants in blowing hot and cold in the same breath is not worth approval.”

13. The facts of the instant, which have been taken note of above, makes its abundantly clear that for the same relief, the petitioner had earlier filed CWJC No 19237 of 2015. The same was withdrawn unconditionally and without even reserving right to move afresh. The petitioner has also taken recourse to civil proceedings by a filing a Title Suit, which fact also has been taken note of above.

14. In view of the consideration above, this Court is not inclined to allow the petitioner to re-agitate the issue in the instant proceedings having withdrawn from the earlier writ petition bearing CWJC No 19237 of 2015. This order, however, shall not effect or prejudice the petitioner’s claim in pending Civil proceedings, which are left to be decided on their merits, in accordance with law.

15. The writ petition is dismissed.

(Madhuresh Prasad, J.)

shyambihari/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	06.03.2021
Transmission Date	

