

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17016 of 2019

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1. Pawan Kumar Acharya S/o Late Ram Chandra Acharya Resident of Road No. 8 Rajeev Nagar, P.S.-Rajeev Nagar, District-Patna
 2. Arvind Kumar S/o Late Jagdish Barnwal Resident of Road No. 4, Mahesh Nagar and P.S.-Patliputra, District-Patna
 3. Md. Shakeel S/o Late Md. Nizaam Resident of 86 uttari neharu nagar harijan colony, Boring Road, P.S.-Patliputra, District-Patna
 4. Bangali Prasad Rai @ Bangali Rai S/o Late Praikshan Rai Resident of Ghanghra House, Boring Canal Road and P.S.-S.K. Puri, District-Patna
 5. Pramod Kumar Patel S/o Late Heera Lal Resident of Choti Badlapur, P.S.-Khagaul, District-Patna
 6. Suresh Kumar @ Suresh Kumar Singh S/o Ram Naresh Singh R/o Suraj Bigha Colony, Bailey Road, P.S.-Rukaspur, District-Patna
 7. Shashi Kumar Sinha Son of Late Nagina Prasad R/o Punaichak, P.S.-Shastrinagar, District-Patna
 8. Bimleshwar Singh S/o Suraj Dev Singh R/o Punaichak, P.S.-Shastrinagar, District-Patna

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Agriculture Department, Government of Bihar, Patna
2. The District Magistrate Patna
3. The District Magistrate-cum-Administrator Bihar Agriculture Produce Marketing Board (Dissolved), Patna
4. The Sub Divisional Officer-cum-Special Officer Bihar Agriculture Produce Marketing Board (Dissolved), Patna
5. Bihar Rajya Pul Nirman Nigam Limited through its Managing Director, 7th Sardar Patel Marg, Patna-800015.
6. The Managing Director, Bihar Rajya Pul Nirman Nigam Limited, 7th Sardar Patel Marg, Patna-800015.
7. The Senior Project Engineer, External Project Division, Bihar Rajya Pul Nirman Nigam Limited, 7th Sardar Patel Marg, Patna-800015.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Nivedita Nirvikar, Sr. Adv.
For the Respondent/s	:	Mr.Lalit Kishore, Sr. Adv.
	:	Dr. Anand Kumar, Adv.
For the Respondent no.4 :		Mr.Nilotpac Sharma, AC to GP-21

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH



ORAL ORDER

7 14-11-2022 The present writ petition has been filed seeking the following reliefs:-

“(i) That the present writ application is being filed for issuance of Appropriate writ/ Writs, Order/orders, Direction/directions more particularly issuance of writ in the nature of Prohibition restraining the respondents from demolishing the shops of the petitioners as convased by the S.D.O Patna Sadar through loudspeaker on 16.08.19 at approx 4.30 pm to be demolished on 17.08.2019 which are allotted to the petitioners by the Bihar State Agriculture Produce Marketing Board.”

At the outset, the learned counsels for the parties have referred to an order dated 21.11.2019, passed by a Co-ordinate Bench of this Court in C.W.J.C. No. 3592 of 2019 (**Rajnandan Prasad and Ors. Vs. The State of Bihar and Ors.**) to contend that the present case is squarely covered by the said order dated 21.11.2019.

It would be apt to reproduce herein below the relevant portion of the aforesaid order dated 21.11.2019 :-

“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."

The learned counsels for the parties are in agreement that the present writ petition can also be disposed off with liberty to the Respondent Authorities to proceed against the petitioners under the provisions of the Public Premises Eviction of Unauthorized Occupants Act, 1971.

Having regard to the aforesaid consensus arrived at in



between the parties, the Respondent Authorities are granted liberty to proceed against the petitioners under the provisions of the Public Premises Eviction of Unauthorized Occupants Act, 1971 and take the proceedings to its logical end.

It is needless to state that till an order of eviction is passed by the competent authority/Court, as against the petitioners, the District Administration shall neither demolish the shops of the petitioners nor shall use any force against them.

The writ petition stands disposed off with the consent of the parties on the aforesaid terms.

(Mohit Kumar Shah, J)

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