

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.638 of 2022

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Sridhar Kumar Verma, Son of Late Sharda Prasad Verma, Resident of Balai Campus Chhata Chowk, Damuchak, P.S. - Kazi Mohammadpur, District - Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Department of Urban Development and Housing, Govt. of Bihar, Patna.
2. The Muzaffarpur Municipal Corporation, through the Town Commissioner, District - Muzaffarpur.
3. The Town Commissioner, Muzaffarpur Municipal Corporation, District - Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Shashank Chandra- Advocate
For the State	:	Mr. Yogendra Pd. Sinha (AAG-7)
For Municipal Corporation:		Mr. Anurag Saurav- Advocate

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CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

3 02-03-2023 Heard learned counsel for the petitioner, learned counsel for the Municipal Corporation and learned counsel for the State.

The order impugned, dated 06.01.2021 (Annexure-5), in the present writ application was subject matter of C.W.J.C. No.3779 of 2021, i.e. the order impugned in the present writ application was assailed earlier in C.W.J.C. No.3779 of 2021.

The C.W.J.C. No.3779 of 2021 was disposed of with a direction to the petitioner by order dated 24.03.2021 recording:-

“Considering the fact that Title Suit No.106 of 2005 is pending before the Sub-Judge-XVI, Muzaffarpur



where the petitioner has every opportunity to seek interim protection, the Court is not inclined to exercise jurisdiction under Article 226 of the Constitution for grant of interim relief.

The petitioner is well advised to approach the Sub-Judge-XVI, Muzaffarpur in pending Title Suit No.106 of 2005 for interim protection in accordance with law which would be appropriately considered by the Court below in accordance with law.”

The learned counsel for the petitioner very fairly submits that when C.W.J.C. No.3779 of 2021 was filed, at that time only the lease agreement entered in between the petitioner and the municipality was cancelled, but the petitioner was not dispossessed. It is next submitted that when C.W.J.C. No.3779 of 2021 was taken up by that time, the petitioner was already dispossessed by the municipality on 29.01.2021 in pursuance of the cancellation of the lease agreement by order dated 06.01.2021.

The learned counsel for the petitioner next submits that since C.W.J.C. No.3779 of 2021 was filed only assailing the cancellation of the lease agreement, as by that time the petitioner was not dispossessed by the municipality, as such, the said prayer for restoring the possession of the petitioner back in the shop was not made. It is next submitted that the petitioner



after passing of the order dated 24.03.2021 in C.W.J.C. No.3779 of 2021, did not challenge the same rather accepted the order as it was.

It is further submitted that no doubt, the petitioner has been dispossessed from the premise in question, but then, municipality did not had the authority to seize goods worth Rs.50 Lacs as the Municipal Act does not mandate nor contain any provisions which authorizes the municipality to seize goods and articles kept within the premises to be seized at the time of eviction.

The learned counsel for the Municipality opposes the writ application and submits that the relief which is being claimed by the petitioner in the present writ application i.e. for quashing of the order dated 06.01.2021 cancelling the lease agreement of the petitioner with the municipality was already under challenge in C.W.J.C. No.3779 of 2021.

It is further submitted that the grounds, which are being raised in the present writ application, were available to the petitioner at the time when C.W.J.C. No.3779 of 2021, was taken up on 24.03.2021. It is also submitted that since the petitioner had accepted the order dated 24.03.2021 in C.W.J.C. No.3779 of 2021 by not filing an appeal, the order dated



24.03.2021 attained finality. It is further submitted that the present writ application is also not maintainable in view of the principles of res judicata and constructive res judicata.

The learned counsel for the Municipality very fairly submits that no doubt, the matter still can be adjudicated in the Title Suit No.106 of 2005, but then, whether the goods and articles, which the petitioner alleges, were seized at the time of eviction, is a matter which can be agitated before a competent forum.

Considering the submissions made by the learned counsel for the Municipality, the Court is not inclined to entertain the present writ application.

The writ application is thus dismissed.

(Satyavrat Verma, J)

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