

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.165 of 2020

In
Civil Writ Jurisdiction Case No.12297 of 2019

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1. The Patna Municipal Corporation through its Municipal Commissioner, Patna.
 2. The Director, Town/Urban Planning, Patna Municipal Corporation, Patna.
 3. The Estate Officer, Patna Municipal Corporation, Patna.

... .. Appellant/s

Versus

Thakur Rama Raman Son of Ram Krishna Prasad Singh, Resident of Mohalla-Srikrishna Nagar, Road No. 20, Police Station-Budha Colony, District-Patna.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Prasoon Sinha, Adv.
For the Respondent/s	:	Mr. P. N. Shahi, Sr. Adv.
		Mr. Manish Kumar No.2, Adv

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 31-01-2023

Re.: I.A. No. 1 of 2020

The present interlocutory application has been filed for condoning the delay of 140 days in filing the present appeal.

For the reasons stated in this application, the prayer for condoning the delay in filing the appeal is allowed.



The interlocutory application stands disposed of.

L.P.A. No.165 of 2020

Heard Mr. Prasoon Sinha for the appellant/Patna Municipal Corporation and Mr. P. N. Shahi, the learned Senior Advocate for the sole respondent.

The appellant/Corporation has stepped into the shoes of P.R.D.A., which had constructed kiosks at the back of a public market space and had let it out to persons on licence fee for eleven years, with renewable clause.

The respondent continued to occupy a particular kiosk for about thirty years, when the appellant/Corporation shot a notice to him on a stray complaint regarding encroachment of the front space by the Respondent. Such notice was responded to but, within seven days, the kiosk was demolished.

It appears from the tenor of the order passed by the learned Single Judge that the demolition was on



the premise that the kiosk was wrongly constructed in set-off area of the building, according to the bye-laws which governs the same.

The learned Single Judge, while deciding the matter viz. the correctness of the decision of the Corporation to demolish the kiosk in such a hasty manner, found that since no construction/kiosk could be made in the set-off area of the building against the bye-laws, there could be no direction for reconstruction of such kiosk and handing over the same to the respondent but, for the loss of vocation of the respondent, who had been occupying the kiosk for the last thirty years in a rightful manner, he was required to be compensated and be given the cost of litigation. The compensation was computed at Rs. 5,00,000/- with Rs. 1,00,000/- additionally as cost of litigation.

Mr. Prasoon Sinha, learned Advocate for the Corporation, apart from questioning the quantum of the compensation, has argued that there is no vested right



of a licensee to continue in the kiosk, the construction of which is not in accord with the bye-laws of the building. The loss of revenue to him on account of dispossession and consequent demolition cannot be used as a tool by the respondent to secure the damages.

He further submits that there can be no gainsaying that such occupation of the kiosk was by virtue of an advertisement and pursuant to an agreement whereafter payment was made of the requisite licence fee. However, when it was ultimately found that the construction of the kiosk itself was violative of the bye-laws, a decision was taken to demolish it for which the Corporation ought not to be penalized.

The respondent was given clear notice to remove his belongings and on only his failure to do so, the kiosk was demolished. Thus, it was not appropriate to, it has been argued, to blow hot and cold i.e. not direct for any reconstruction or repossession of the



kiosk, meaning thereby that the right of the Corporation to demolish an unauthorised structure was vindicated but awarding a compensation of Rs. 5,00,000/- with additional Rs. 1,00,000/- as cost of litigation to be paid by the Corporation. The computation of the quantum of damages is also without any apparent calibration.

As opposed to the aforesaid contention, Mr. Shahi has submitted that the learned Single Judge was at pains to find that an extreme haste was shown by the Corporation, without realising that the respondent was not an encroacher but, a licensee in the kiosk. Such licence was renewed after eleven years of initial term of licence.

He further submits that the bye-laws, under the garb of which such demolition has taken place, was framed only in 2014, whereas the kiosk in question was let out to the respondent before the formulation of such bye-laws.

In that event, it was only appropriate of the



Corporation to have allowed the respondent to continue in the kiosk till the period of licence expired, which would have otherwise expired in the last month of 2022. The kiosk was demolished sometimes in the middle of 2019. This left the respondent absolutely hapless for no fault of his and, precisely for restitution of this wrong, the learned Single Judge has awarded compensation and the cost of litigation.

After having heard the counsel for the parties and having perused the judgement impugned, we find that the learned Single Judge has relied upon such decisions of the Supreme Court wherein compensation was awarded where there was illegal detention.

Apart from this, the learned Single Judge appears to have wrongly construed the licence to be a lease and therefore had come to the conclusion that any right flowing out of the lease, having been taken away before the expiration of the lease, would give a right to the lessee to demand damages, which was ultimately



allowed by the learned Single Judge.

None of these grounds weigh with us for affirming the order.

However, under the circumstances we find that the respondent was rendered out of business and thus out of his vocation which was the only source of his livelihood three years prior to the expiration of the lease. At best, he should have been returned proportionate amount of fee which remained unutilized.

We also find that the Corporation has shown unnecessary haste and did not even allow the respondent to remove his belongings for which there was a litigation in the past but it was not taken to any logical conclusion.

True it is that a licensee cannot claim to remain a licensee for ever. In the present case, there does not appear to be any malafides on the part of the appellant on face of it, for the reason that all the kiosks in the set-off area of the Maurya Lok Complex has been



demolished, in keeping with the requirement under the bye-laws. The loss of business to the respondent but cannot be the consideration for slapping a whopping amount of Rs. 5,00,000/- on the Corporation as a measure of recompense.

In our estimation, it would have sufficed if the licence fee for the three years would have been returned to the respondent as he was not at fault for the erection of the kiosk and his consequent occupation of the same. That there was some rancour generated at the haste shown by the Corporation in demolition of the kiosk; which led to litigation at various forums and the matter remains alive today as well because of the pendency of this appeal against the order passed by the learned Single Judge.

In our guesstimate, an amount of Rs. 3,00,000/- in all, inclusive of the cost of litigation, would be rational and would serve the ends of justice.

The order passed by the learned Single Judge is



therefore modified to the extent that now the Corporation shall pay to the respondent an amount of Rs. 3,00,000/- which shall be to his satisfaction towards all his dues and entitlements against the Corporation, subject to the caveat that all litigation, at all forums shall be withdrawn by the parties hereinafter.

With the aforementioned modification in the judgment and order dated 01.10.2019, the appeal stands disposed of.

(Ashutosh Kumar, J)

(Satyavrat Verma, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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