

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.11946 of 2018**

Binod Kumar Son of Saligram Prasad, Resident of near Uma Cinema, Dumri Kothi, Lane No.1, Salimpur Ahra, Police Station- Kadam Kuan, District-Patna.

... .. Petitioner/s

Versus

1. The Patna Municipal Corporation through the Municipal Commissioner
2. The Municipal Commissioner, Patna Municipal Corporation, Patna.
3. The Estate Officer, Patna Municipal Corporation, Patna.
4. The Executive Engineer, Patna Municipal Corporation, Patna.

... .. Respondent/s

**Appearance :**

|                      |   |                                                                    |
|----------------------|---|--------------------------------------------------------------------|
| For the Petitioner/s | : | Mr. Satyam Shivam Sundaram, Advocate<br>Mr. Mukesh Kumar, Advocate |
| For the Respondent/s | : | Mr. Prasoon Sinha, Advocate<br>Mr. Prabhakar Singh, Advocate       |

**CORAM: HONOURABLE MR. JUSTICE RAJIV ROY**

**ORAL JUDGMENT**

**Date : 10-07-2023**

It has been contended by the learned counsel for the petitioner, Mr. Mukesh Kumar that neither he is prepared to argue nor has come with the file. As such, a cost of Rs. 2,000/- is imposed upon him to be deposited with the Patna High Court Legal Services Committee within a period of two weeks and receipt thereof has to be submitted in the office.

2. In this writ application, the petitioner prays for the issuance of an appropriate writ/order/direction upon the



respondents for the grant of following reliefs :-

(i) for quashing of the notice as contained in letter no 4428 dated 11.6.2018 issued under the signature of the Estate Officer, Patna Municipal Corporation (on the order of the Municipal Commissioner, Patna Municipal Corporation) whereby and whereunder he has been finally directed to vacate the House no.M2/29 by 14.6.2018 and hand over the same to the Executive Engineer, Nutan Rajdhani Pramandal (North) failing which the authority/ Patna Municipal Corporation shall take forcible possession and while doing so, amount spent on it shall be recovered from the petitioner;

(ii) for commanding the respondent authorities to bring on record the order contained in memo no.1456 dated 18.2.2014 and quash the same whereby and whereunder it has been communicated to the land lady of house no.M2/29 Sri Krishnapuri, Patna that the lease deed has been cancelled for violating the terms and conditions of the lease;

(iii) for direction upon the respondent authorities to consider the representation of the petitioner dated 13.6.2018 pursuant to the notice dated 11.6.2018 and pass an appropriate order in accordance with law;

(iv) for restraining the respondent authorities



from taking any coercive step against the petitioner pursuant to notice contained in letter no.4428 dated 11.6.2018 during pendency of the writ application.

3. The matter relates to a piece of land at Sri Krishnapuri, Patna details of which are as follows:

*“2814.50 sq.ft. of land situated at Sri Krishnapuri (South) in Mauza Dhankanpura, Thana No.7, Survey Thana Phulwari, Old Police Station-Kotwali, present police station-Sri Krishnapuri in the town and district- Patna bearing plot/house no.M-2/29 in Block no.8, Phase No.1, Lease out/allotted by the then Patna Improvement Trust (later on converted into Patna Regional Development Authority and now merged in Patna Municipal Corporation vide Patna Municipal Act, 2007), Ward No.21, Circle No.249, Old Holding no.2977/1434”.*

4. As per the petition, a categorical statement has been made in paragraph 12 stating therein that no show cause was ever issued before the passing of the order dated 18.02.2014 and as such a request was made to recall the order.

5. It has been further contended in paragraph 13 of the petition that he never got any response on the



representation preferred on 13.06.2018 forcing him to move before this Court.

6. The matter is of 2018; copies were served upon the counsel for the Patna Municipal Corporation on 21.06.2018 i.e. five years from today but no counter affidavit is on the record. This despite the fact that co-ordinate bench had directed it to file detailed counter affidavit on 27.05.2019.

7. It is to be noted that during pendency of the writ petition, the premises of the petitioner was sealed forcing him to file I.A. No. 01 of 2019.

8. A co-ordinate Bench of this Court on 27.05.2019 allowed the **I.A. No. 1 of 2019** with following direction incorporated hereinbelow:-

*“Re: Interlocutory Application No.1 of 2019*

*Heard Mr. P. K. Shahi,  
learned senior counsel for the petitioner.  
Nobody appears on behalf of the  
respondents.*

*2. The present Writ  
Application has been filed against the notice  
dated 11.06.2018 issued by the respondent  
no. 3 to Smt. Indu Bala Sahay asking her to  
vacate premises No. M-2/29 at Shri Krishna  
Puri in the town of Patna. The petitioner is  
the power of attorney holder on behalf of the*



*said lady.*

*3. Learned counsel for the petitioner submitted that the notice indicates that under Memo No. 1456 dated 18.02.2014, the allotment of the house in question was cancelled and, thus, the direction is to vacate the same. It was submitted that at no point of time even the petitioner or the allottee was noticed and in fact ever after the said date ie, 18.02.2014, she has been paying up-to-date taxes in relation to the property. In support thereof, learned counsel drew the attention of the Court to Annexure-3 series.*

*4. Let the respondents file detailed counter affidavit with regard to the issues raised in the writ petition especially, with regard to their being no service of notice on the allottee prior to passing of the order dated 18.02.2014.*

*5. Though, the Interlocutory Application has been filed on 02.05.2019 for restraining the authorities from taking coercive steps against the petitioners, but subsequent to filing of the writ petition and the Interlocutory Application, it appears that the premises has been sealed by the respondents on 03.05.2019. Such fact has been stated in the supplementary affidavit filed on behalf of the petitioner on*



07.05.2019.

6. *As there is nobody appearing on behalf of the respondents and a categorical statement made in the writ petition that no prior notice with regard to order dated 18.02.2014 having been issued in the so called proceeding against the allottee and the authorities having accepted an amount of Rs. 24,377/- as holding tax as late as 02.05.2019 itself, the Court finds that a case for interim relief has been made out.*

7. *Accordingly, the respondents are directed to unseal the premises in question and hand over the same to the petitioner/allottee forthwith. However, this shall not preclude the respondents in taking steps, in accordance with law, after complying with the principles of natural justice.*

8. *Interlocutory Application No. 1 of 2019 stands disposed off.*

9. *The matter be listed on 24th June, 2019, among the top five cases.*

9. The interim order dated 27.05.2019 passed in I.A. No. 01/2019 was challenged in the LPA No. 1672 of 2019 by the Patna Municipal Corporation through its lawyer, Mr. Prabhakar Singh (who appears for the Patna Municipal



Corporation in the present writ petition too). The same was heard and dismissed on 01.12.2022.

10. Still, the PMC chose not to file counter affidavit in the matter.

11. In view of the categorical statement made by the writ petitioner (in paragraph 12 of the writ petition) not controverted by the Patna Municipal Corporation by filing any reply and/or counter affidavit, the same is accepted.

12. Despite the knowledge of the pendency of the writ petition and challenging the interim order by filing appeal, if the respondent chooses not to rebut the same by filing any reply for five long years, it will be deemed that they have accepted all the averments made in the writ petition. The consequence has to follow.

13. The order in question i.e. the letter no. 4428 dated 11.06.2018 passed by the Estate Officer, Patna Municipal Corporation (Annexure-1 to the writ petition) and all the consequential orders stand quashed.

14. The C.W.J.C. No. 11946 of 2018 is allowed with liberty to the Patna Municipal Corporation to act in accordance with law after putting the petitioner on notice.

15. The writ petition stands disposed of with



the aforesaid observation.

**(Rajiv Roy, J)**

Jagdish/Kiran/-

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| AFR/NAFR          | AFR        |
| CAV DATE          | N.A        |
| Uploading Date    | 13.07.2023 |
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