

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2605 of 2023

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M/s Swagatam Banquet Hall and Guest House through its Proprietor Sanjay Kumar aged about 48 years, Male, son of Late Laxman Prasad, resident of Sampati Apartment, Flat No. A- 1, Kali Sthan, Church Road, Kali Mandir, Main Road, P.S. Lower Bazar, Ranchi ... Petitioner

Versus

1. The State of Bihar through Managing Director Bihar State Tourism Development Corporation Ltd. R- Block, Beer Chand Patel Path, Patna 800001.
2. Managing Director Bihar State Tourism Development Corporation, R-Block, Beer Chand Patel Path, Patna 800001.
3. Additional General Manager Bihar State Tourism Development Corporation, R- Block, Beer Chand Patel Path, Patna 800001.
4. Manager Bihar State Tourism Development Corporation, R- Block, Beer Chand Patel Path, Patna 800001.
5. Manager Hotel and Lease Bihar State Tourism Development Corporation, R-Block, Beer Chand Patel Path, Patna 800001.
6. Zonal Manager Bodhgaya Node- 1 and Node- 2 Bihar State Tourism Development Corporation.
7. The State of Bihar through Principal Secretary, Bihar State Tourism Development Corporation Ltd, R- Block, Beer Chand Patel Path, Patna 800001 ... Respondents

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Appearance :

For the Petitioner	:	Mr. Rajesh Ranjan No. 1, Adv.
For the State	:	Mr. Sita Ram Yadav, GP XVI
For the Corporation	:	Mrs. Anukriti Jaipuriyar, Adv.

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL ORDER

7 30-08-2023 Heard the learned counsel for the parties.

2. The present writ petition has been filed for the following relief(s) :

“(i) For issuance of a writ in the nature of Mandamus directing the respondent authority to grant six months gestation period to the petitioner firm with effect from 02.09.2021 treating the same as the actual date of handing over the possession of the leased properties for calculation of gestation period of 06 months in view of the fact that respondent no. 6 handed over the charge of the leased properties on



the said date.

(ii) Consequent upon change of handover date a writ in the nature of Mandamus directing the respondent authority to waive of the "Management Fee" inclusive of taxes for the aforesaid gestation period along with interest imposed on late payment may be issued.

(iii) Any other writ/writs, order/orders or direction/directions as the facts and circumstances of the case may require and deemed fit by this Hon'ble Court may also be issued.

3. Learned counsel for the petitioner has stated that the petitioner has participated in the tender floated by the respondents and being the highest bidder he was given the contract. That the agreement between the parties was entered on 25.01.2021 and, thereafter, the petitioner was given the actual possession on 02.09.2021. Learned counsel has stated that after the agreement was entered between the parties, the authorities had re-negotiated the rates of the contract and increased the annual fee on the understanding that the gestation period of six months will start from the date of handing over the possession of the property. Learned counsel has stated that the possession of the property was handed over to the petitioner on 02.09.2021 as evidenced by charge report, dated 02.09.2021 (Annexure 12), therefore, the counsel states that the gestation period of six months should start from 02.09.2021. But, however, the



respondents are trying to calculate the said gestation period from the date of agreement.

4. Per contra, the learned counsel appearing on behalf of the respondents has vehemently opposed the very maintainability of the present Writ Petition. Counsel has stated that this Court cannot decide the disputed question of fact and the present Writ Petition has to be dismissed. Learned counsel has stated that as per the terms of the contract (NIT) more specifically Clause 8 of the Terms and Conditions of the Tender Notice, a maximum period of 60 days is given to the lessee. Further, counsel for the respondents has stated that the petitioner participated in the tender notification duly taking into consideration the fact that the premises was offered in as is where is basis. That the petitioner was well aware of the furnishing and the fixtures which were there in the subject premises prior to his participation in the tender process. Further, the learned counsel for the petitioner has taken this Court to the various correspondences between the parties to substantiate that the physical possession of the subject property was handed over to the petitioner on 06.02.2021 and not on 02.09.2021 as stated by the petitioner. That in the letter of allotment it is clearly mentioned that the subject property is handed over to the



petitioner in as is and where is condition. That the authority concerned by letter, dated 06.03.2021, has clearly stated that the subject property was handed over to the petitioner on 06.02.2021. Learned counsel for the respondents has stated that the document relied by the petitioner to substantiate his claim that the possession was given on 02.09.2021 is only an inventory of the items which were found in the subject property, but, does not indicate that the possession was given to him on 02.09.2021. Learned counsel has stated that the correspondences between the parties clearly reveal that the petitioner was put in possession of the subject property on 06.02.2021. Further, learned counsel for the respondents has also drawn the attention of the Court to Annexure R/2, letters addressed by the petitioner wherein he has admitted that he was put in physical possession of the property on 06.02.2021 itself and, therefore, prayed this Hon'ble Court to dismiss the present Writ Petition.

5. The only bone of contention between the parties in the present case as culled out from the material on record is whether the petitioner was put in physical possession of the subject property on 02.09.2021 as claimed by the petitioner or 06.02.2021 as claimed by the respondents. The letters written by the petitioner, more particularly Annexure R/2 clearly



indicate that the petitioner has addressed a letter to the Managing Director on 11.02.2021 stating that they have taken physical possession of the subject property and it is, further, stated that there is some material belonging to the Department and they may not require the same as the petitioner want to re-furnish the entire hotel with the new material. The said letter was followed-up by another letter, dating 2nd March, 2021, reiterating the very same contents. Both the letters establish the fact that the petitioner was put in physical possession of the subject property on 06.02.2021 itself and not on 02.09.2021 as contended. The document relied by the petitioner, i.e., filed at Annexure 12, which is signed on 02.09.2021 is an inventory of the items which were available in the rooms of subject premises. The said letter cannot by any stretch of imagination be said that the possession of the properties were handed over to the petitioner on 02.09.2021. The petitioner has been handed over the physical possession of the subject property on 06.02.2021 and as per the terms of the letter of allotment the same is on “as is and where is basis”. The furnishing and the fixtures which found in the rooms are part and parcel of the subject property. As the petitioner wanted to re-furnish the entire premises with new fittings and furniture and did not want the old furniture the



same were removed and an inventory made on 02.09.2021. The inventory prepared on 02.09.2021 cannot be taken advantage by the petitioner to contend that he was put in physical possession of the property only on 02.09.2021.

6. Having regard to the above mentioned facts and circumstances, the prayers sought for by the petitioner cannot be granted. This Court does not find any merit in the present case which warrants the invocation of the extra ordinary jurisdiction under Article 226 of the Constitution of India for granting the reliefs claimed.

7. The present Writ Petition is, accordingly, **dismissed**.

8. However, liberty is granted to the petitioner to make a representation to the authorities concerned for enlarging the gestation period. In case any application is made the authorities are free to consider the same on its own merits.

(A. Abhishek Reddy , J)

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