

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4467 of 2021

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Awadhesh Kumar, aged about 70 years, M, S/o Late Mathura Singh, R/o Village - Katauli Math, P.S. - Hulasganj, Distt. - Jehanabad, at present M/S Anjali Photo State and Printing Press, Mohalla, Malik Sarai, Kali Sthan, Ward no. 2, Nagar Panchyant Islampur, P.S. - Islampur, Distt. - Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Education, Govt. of Bihar, Patna.
2. The Principal Secretary, Department of Education, Govt. of Bihar, Patna.
3. The District Education Officer, Nalanda at Biharsharif.
4. The Sub Divisional Magistrate, Hilsa Nalanda.
5. The Circle Officer, Islampur Block, Islampur, Nalanda.
6. The Officer in Charge, Islampur, P.S. Islampur, Nalanda.
7. The Principal, Netaji Sri Subhash Higher Middle (Plus 2) School, Islampur, Nalanda.
8. Krishnadeo Prasad, S/o Late Ragho Prasad, R/o Mohalla - Hanumanganj, P.S. Islampur, Distt. - Nalanda. Retd. Teacher, Netaji Sri Subhash Higher Middle (Plus 2) School, Islampur Nalanda.
9. Prem Prabhat, S/o Krishnadeo Prasad, R/o Mohalla - Hanumanganj, P.S. - Islampur, Distt. - Nalanda.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Amresh Kumar Sinha, Advocate.
For the Respondent/s	:	Mr. Prabhakar Jha, GP-27.
For the Respt Nos. 8&9	:	Mr. Anil Kr. Jha, Senior Advocate with Mr. Binoy Kumar, Advocate. Mr. Manoj Madhar, Advocate.

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY

ORAL JUDGMENT

Date : 21-08-2024

Heard learned counsel for the parties.

2. The present Writ Petition has been filed for
the following reliefs:-



“(i) To issue writ(s) of Certiorari in nature setting aside the letter No. 1138 dated 24.09.2019 issued under signature of Sub-Divisional Officer, Hilsa, Nalanda by which direction has been issued to Circle Officer, Islampur and officer in charge, Islampur to dispossess the petitioner and give possession of shop which is taken on rent by petitioner from Respondent No. 9, Prem Prabhat.

(ii) Further to set aside the order as contained in Memo No. 10 dated 01.01.2020 issued under signature of Circle Officer, Islampur by which direction has been issued to the petitioner to vacate the shop No. 5, rented premises given on rent by Prem Prabhat to the petitioner since 5th January, 2009.

(iii) Further to issue a writ of mandamus in nature directing the Respondent No. 7, the Principal, Netaji Sri Subhash Higher Middle (+2) School, Islampur Nalanda, to comply the direction issued by the District Education Officer, Nalanda at Biharsharif, Respondent No. 3, as contained in Letter No. 495 dated 03.05.2018 as contained in Annexure to this writ petition.

(iv) Further to issue direction to the Sub-Divisional Magistrate, Hilsa Nalanda, the Circle Officer, Islampur Block, Islampur, Nalanda and Officer in-charge Islampur, PS not to disturb the status and nature of petitioner's shop.”

3. It is the case of the petitioner that the subject shop was originally allotted to the Respondent No. 9 who is none other than the son of the Respondent No. 8 herein.



That after the retirement of the Respondent No. 8, he has asked the petitioner to vacate the shop. When the petitioner refused to do so, the Respondent No. 8 using his influence has got the petitioner vacated from the subject shop. That the Sub-Divisional Officer under the influence of the Respondent No. 8 has passed the impugned order dated 01.01.2020. Learned counsel for the petitioner has stated that the action of the Sub-Divisional Officer at the behest of the Respondent No. 8 is illegal, arbitrary and against the principles of natural justice and equity. Learned counsel has stated that the Respondent No. 8 is not the owner of the subject premises, therefore, he had no locus to seek vacation of the petitioner from the subject shop.

4. Learned counsel for the Respondent Nos. 8 and 9 has vehemently opposed the very maintainability of the present writ petition. Learned counsel has stated that the present writ petition has become infructuous as the petitioner has already vacated the subject premises. Further, it is stated that the petitioner does not have any legal right to file the present writ petition or claim the reliefs sought for in the present writ petition. Learned counsel has stated that



there is no lease agreement between the Respondent No. 9 or the petitioner and he was working as salesman in the subject shop. That the Respondent No. 8 is actually paying the rents to the owner of the property and the present writ petition is liable to be dismissed on the sole ground that the owner of the property is not made a party-respondent in the present writ petition. Learned counsel has also stated that there are disputed questions of fact which cannot be gone into the writ petition more particularly by this Court adjudicating under Article 226 of the Constitution of India.

5. Learned counsel appearing on behalf of the Respondent-State has also vehemently opposed the very maintainability of the present writ petition and questioned the locus of the petitioner to file the present writ petition. Learned counsel has stated that the subject shop was allotted to the Respondent No. 9 by the school and the subject property is a Government property. Learned counsel has stated that there is no lease-deed between the owner of the property and the petitioner. Learned counsel has, therefore, prayed this Hon'ble Court to dismiss the present CWJC.



6. In this particular case as seen from the record, the petitioner has not filed any iota of evidence or scrap of paper to prove that any lease-agreement was entered between the Respondent No. 9 and himself. Except the oral statement made by the petitioner that he has been paying the rents to the Respondent No. 9, no documentary proof has been filed. Even though, learned counsel for the petitioner has stated that based on the No Objection Certificate (N.O.C.) issued by the Respondent No. 7 only, the electricity connection in the name of the petitioner was given. It is to be noted that merely because the electricity connection is taken for the subject shop the same cannot be conclusive proof that the petitioner is in possession of the subject property. Further as seen from the pleadings, the question as to whether the petitioner was in possession of the subject property or whether he was evicted from the subject shop are all disputed questions of fact which cannot be gone into by this Court adjudicating under Article 226 of the Constitution of India. When the respondents are seriously disputing the averments made by the petitioner, this Court sitting under Article 226 of the Constitution of



India cannot go into the veracity of the statements made and it is only the competent civil court which can decide the same.

7. Having regard to the above-mentioned facts and circumstances, this Court is not inclined to entertain the present writ petition and the same is accordingly dismissed. However liberty is granted to the petitioner to approach the civil court either for restoration of his possession or for seeking compensation, if he is so advised.

8. With the above directions, the present writ petition is disposed of.

(A. Abhishek Reddy, J)

shakir/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.09.2024
Transmission Date	NA

