

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.110 of 2020
In
Civil Writ Jurisdiction Case No.14223 of 2013

Anil Kumar Agrawal, Male, aged about 56 years, Son of Late Bhola Ram Agrawal, Proprietor of M/s A.K. Enterprises, Residing at Village+Post-Bakhri Bazar, Police Station- Bakhri Bazar, District- Begusarai.

... .. Appellant/s

Versus

1. M/s Awtar Enterprises, through its Proprietor, Ajay Kumar Gupta, Son of Ram Sagar Gupta, Resident of Village- Chak Salem, Ward No. 13, Post Office+Police Station- Patori, Block- Patori, District- Samastipur (Bihar)
2. The State of Bihar through its Secretary, Urban Development Department, Bihar, Patna
3. The Sub Divisional Officer-cum-Special Officer, Agriculture Produce Market Committee (Dissolved), Samastipur

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Manoj Kumar, Advocate Mr. Subodh Kumar Sinha, Advocate Mr. Ravi Bhatia, Advocate
For the Respondent/s	:	Mr. M.P. Dixit, Advocate Mr. Sanjay Kumar Dixit, Advocate Mr. Sanjay Kumar Chaubey, Advocate Ms. Swastika, Advocate Mr. Shailendra Kumar, Advocate Mr. Milind Raj Dixit, Advocate Mr. Punit Ranjan Dixit, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 11-09-2024

A common judgment in two writ petitions, filed by rival claimants, was challenged by one of the claimants in a single appeal filed against the judgment in his writ petition. The judgment in that writ petition was set aside and remanded;



which writ petition was allowed by the learned Single Judge. As of now, there is a judgment in favour of the 1st respondent directing consideration of his prayer for resumption of allotment of a shop room, while the judgment in the writ petition filed by the appellant stands allowed by the earlier common judgment.

2. The controversy is in a short compass as to whether the cancellation of the 1st respondent's allotment, on the allegation of subletting, is correct or not. After the cancellation; which was challenged in a writ petition, the appellant was allotted the said shop room, the keys of which were also handed over along with possession; when the writ petition filed by the 1st respondent stood dismissed for default. The 1st respondent's writ petition, which was dismissed for default, stood restored.

3. Both the appellant's and the 1st respondent's writ petition was considered and disposed of by a common order. The rejection of the 1st respondent's writ petition, on the grounds of delay and laches was set aside by the Division Bench in LPA No. 1680 of 2017. There was no appeal filed from the judgment in the writ petition, filed by the appellant herein; which has given rise to the present stalemate. Even now, the 1st respondent has not chosen to challenge the earlier order in the writ petition, filed by the appellant herein, in which the 1st



respondent was a party.

4. The cancellation was on the ground of subletting, which order also indicated that the 1st respondent had failed to respond to a notice issued on the said ground. Admittedly, the appellant had responded to it and there was a reply on record; which was not considered. A representation to recall the earlier order was filed, which was rejected. Specific contention was raised that there was no subletting and the shop was run by the allottee's brother, when he had been taken ill.

5. The learned Single Judge, on remand, directed that the 1st respondent's case be considered afresh and that he be resumed the property in the meanwhile. It was also directed that if the 1st respondent's claim is upheld then the appellant would have to be refunded the advance amounts along with Rs. 10,000/- as compensation. Whereas, the earlier common order, in the writ petition filed by the appellant, had affirmed his allotment after cancellation of the earlier allotment.

6. True, the appellant's allotment would depend upon the adjudication of the claim raised by the 1st respondent before this Court. However, the 1st respondent had not chosen to file an appeal from the order in the writ petition filed by the appellant, thus disentitling his remedy for a reconsideration. We are also



persuaded by the fact that earlier, the writ petition filed by the appellant was dismissed for non-prosecution. Admittedly, it was restored by this Court, but it was in the interregnum that the appellant was allotted the shop room based on the cancellation.

7. In the circumstance of the order in the appellant’s writ petition having not been challenged, we are of the opinion that there could be no reconsideration now. We set aside the judgment of the learned Single Judge dated 06.01.2020 passed in CWJC No. 14223 of 2013 and allow the appeal.

8. Interlocutory Application(s), if any, shall stand closed.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

P.K.P./-

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CAV DATE	
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