

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12641 of 2022

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Gaurav Kumar Raut Son of Late Lalan Raut, resident of Mohalla-
Maharajganj, Ward No. 13, District and Town-Madhubani, Pin-847211.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Urban Development, Government of Bihar, Patna.
2. The District Magistrate, Madhubani.
3. The Municipal Corporation, Madhubani through its Municipal Commissioner, Red Cross Road, Tirhut Colony, Madhubani-847211.
4. The Municipal Commissioner, Municipal Corporation, Madhubani, Red Cross Road, Tirhut Colony, Madhubani-847211.
5. Surya Deo Prasad son of Laxami Narayan Prasad, resident of Mohalla-Kishori Lal Chowk, Bara Bazar, Ward No. 10, Police Station-Madhubani Town, District and Town Madhubani.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ashok Kumar Choudhary, Advocate Ms. Sushmita Kumari, Advocate Ms. Binni Kumari, Advocate
For the Respondent/s	:	Mr. Abbas Haider (SC-6)
For the Municipal Corporation:		Mr. Nilendu Kumar Choudhary, Advocate

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

3 25-04-2024 Heard Ms. Sushmita Kumari, learned counsel

 appearing on behalf of the petitioner; Mr. Nilendu Kumar

 Choudhary, learned counsel appearing on behalf of the

 Madhubani Municipal Corporation and Mr. Abbas Haider,

 learned SC-6 for the respondent/s.

2. The petitioner has prayed for following relief(s) in

paragraph no. 1 of the writ petition:

*"That this application is being moved for the
issuance of a writ in the nature of mandamus commanding
the respondents particularly to the Municipal
Commissioner, Madhubani to stop oral allotment of Shops
No. D/8 & D/9 of Gandhi Bazar, Madhubani town to
respondent no. 5 without following the due process of*



auction and general notice to public at large and further restrain the respondent no.5 from making alteration or new construction within the aforesaid shop premises.

AND

Further issue direction upon the respondent Municipal Corporation Madhubani to make settlement of the aforesaid shop no. D.8/9, Gandhi Bazar Madhubani through due process of auction/bid in which petitioner being one of the aspirant can also participate."

3. Learned counsel appearing on behalf of the petitioner submitted that as per the decision of the Chairman of Madhubani Municipal Corporation, petitioner was allowed to run the business from Shops no. D/8 and D/9 on the basis of mutual understanding between the original allottee of the said shop, Late Pitamber Bhagat and the ancestor of the petitioner Late Guneshwar Raut. No default of rent, in any manner, was ever made by the ancestor of the petitioner and on the basis of some interested person and without taking into consideration the fact that the petitioner was still occupying and was running shops for livelihood, in complete violation of Article 21 of the Constitution of India, the Madhubani Municipal Corporation came out with an advertisement notifying auction for renting out the said two shops, which were already in occupation of the petitioner from 24.09.1991. The petitioner was prevented from participating in the auction. Both the shops were auctioned in favour of the highest bidder. Total bid amount being six lacs in respect of shop no. D/8 and five lacs in respect of shop no. D/9.



Learned counsel admits the fact that the third party right has been created and, as such, the petitioner being put on road without any employment cannot be harassed by the Municipal Authorities. In these backgrounds, learned counsel submitted that the Municipal Authorities may consider to allot some shop in the same vicinity or in any place in the municipal area, where the shop is vacant, so that family can sustain to survive.

4. Mr. Nilendu Kumar Choudhary, learned counsel appearing on behalf of the Madhubani Municipal Corporation submitted that in case the shops are available and the petitioner fulfills the requisite terms and conditions, the same can be considered to be allotted to the petitioner. The petitioner may file a representation before the Municipal Commissioner so that shop can be identified if vacant and decision can be taken whether an agreement can be entered into with the petitioner.

5. Considering the rival submissions made on behalf of the respective parties, as well as, the fact that vide Letter dated 24.09.1981, the mutual adjustment between the original allottee, Late Pitambar Bhagat and Late Guneshwar Raut, whose descendant the petitioner is, was duly recognized by the then Municipal Commissioner and after considering the facts, he has allowed the ancestor of the petitioner to run the shops vide order



dated 24.09.1981 and, thereafter, without giving any notice to the petitioner pursuant to the advertisement contained in Memo No. 1162 dated 16.05.2009. The two shops have been settled in favour of two persons and the petitioner has been left without employment and he is unable to sustain his family.

6. The Municipal Commissioner, Madhubani is directed to consider the representation of the petitioner sympathetically, and if shops are available and the petitioner agrees to abide by the terms and conditions imposed in accordance with law and is ready to pay rent fixed by the Municipal Commissioner and no paraphernalia is required then, the petitioner be forthwith allotted any shop within the vicinity or in municipal area, if desired by the petitioner.

7. The representation or application may be duly considered in accordance with law within a period of six weeks from the date of communication of this order after hearing the petitioner.

8. Accordingly, the present writ petition is disposed of.

(Purnendu Singh, J)

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