

(2020) 01 PAT CK 0175

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 13681 Of 2019

Atul Kumar Singh

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 09-01-2020

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2020) 01 PAT CK 0175

Hon'ble Judges : Ahsanuddin Amanullah, J

Bench : Single Bench

Advocate : Alok Kumar Choudhary, Binod Kumar Sinha, Kinkar Kumar, Deepika Sharma, Prasoon Sinha, Ashok Kumar Choudhary, Akshansh Ankit

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the petitioner; learned AC to SC 9 for the State; Mr. Prasoon Sinha, learned counsel for the Patna Municipal Corporation

(hereinafter referred to as the 'Corporation') and Mr. Ashok Kumar Choudhary, learned counsel for the respondent no. 7.

2. The petitioner has moved the Court for the following reliefs:

â??A. A writ in the nature of certiorari for quashing the letter no. - 7353 dated 8.6.2019 issued by the Director town Planning, Patna Municipal

Corporation by which the Director, Town Planning has directed the petitioner to demolish and remove his Kiosk no. 8 situated at Maurya Lok

Commercial Complex within a week and if it has not been removed then it will be demolished by the department and expenses would be recovered

from him.

B. For a writ in the nature of mandamus commanding the Respondents to restore and reconstruct the Kiosk no. 08 of the petitioner which has been

demolished by the order of the Director, Town Planning Patna Municipal Corporation vide letter no. 7353 dated 8.06.2019.

C. For a writ, order or direction to the respondents to rehabilitate the petitioner for the illegal demolition of his Kiosk No. 08 by the Patna Municipal Corporation.

D. For any other appropriate writ/writs, order/orders, direction/directions which may be fit in the facts and circumstances of the cases.

3. The issue relates to demolition of Kiosk No. 8 located on the premises of Maurya Lok Complex in the city of Patna by the Corporation, which was

originally allotted to one Onkar Nath Singh. The petitioner in the writ petition has claimed to be the allottee and at various paragraphs he has stated

with regard to the steps he took at the time of allotment of the Kiosk on lease basis in the year 1995. Counter affidavit has been filed on behalf of the

Corporation on 20.09.2019, after service of copy on learned counsel for the petitioner on 19.09.2019. In the said counter affidavit, a categorical stand

has been taken that the petitioner was a non-entity and had no locus to maintain the present writ application as he was never an applicant, muchless,

allottee of the aforesaid Kiosk No. 8. It was stated that the original allottee was Onkar Nath Singh and after that the Kiosk has not been allotted to

any other person. It appears that the petitioner thereafter filed a rejoinder which has been affirmed on 09.12.2019 in which he has admitted that he is

not the original allottee and also the fact that Onkar Nath Singh was the original allottee. However, his stand is that he has been given Power of

Attorney by Onkar Nath Singh to deal with the Kiosk in question. Copy of the said General Power of Attorney has been registered on 29.04.2013

before the Deputy Registrar, Ranchi City Area-2. Copy of another document has also been brought on record which is revocation of General Power

of Attorney executed in favour of the intervenor (respondent no. 7). The said revocation has been made on 08.06.2005 with regard to the General

Power of Attorney executed in favour of the respondent no. 7 on 25.12.2004. However, such revocation document is only on Rupees 100 Non Judicial

stamp paper and neither notarised nor registered.

4. In such view of the matter, when the application has been filed by the petitioner namely Atul Kumar Singh misrepresenting himself to be the original

allottee and even later in his rejoinder having been filed after almost three

months after receiving the counter affidavit of the Corporation, in which it is admitted that he is only the Power of Attorney holder, and till date the said Onkar Nath Singh neither coming before the Court nor there being anything to indicate that he has knowledge of filing of the present case, in the considered opinion of the Court, the petitioner cannot maintain the present writ application. It is only Onkar Nath Singh, who was the allottee of Kiosk No. 8, who could have instituted and pursued any proceeding, may be through his Power of Attorney, but it had to be in the name of the original allottee, i.e., Onkar Nath Singh, which has not been done. Even in the cause title, the petitioner has not claimed that he was acting as a Power of Attorney holder on behalf of Onkar Nath Singh. Thereafter, even in the rejoinder, no such prayer has been made or amendment sought to modify the application to describe the petitioner as Power of Attorney holder on behalf of Onkar Nath Singh.

5. In the aforesaid factual background, the Court has no hesitation to hold that the present application is not maintainable.

6. However, in view of the blatant misrepresentation and falsity stated by the petitioner in the writ petition claiming himself to be the allottee of the Kiosk in question, the Court had two options. Firstly, to direct the Registrar General of the Court to file a complaint before the competent Court for stating such falsity on oath in the present judicial proceeding or to impose cost, or both. The Court would go for the second option.

7. Accordingly, cost of Rs. 50,000/- is imposed on the petitioner for filing the present writ petition in the manner as has been discussed earlier in the order. The same be deposited in the Juvenile Justice Fund of the State Social Welfare Department within two weeks and receipt filed, failing which the matter shall be placed before the Bench for appropriate orders.

8. Coming to the issue with regard to respondent no. 7, who also claims that in his favour Onkar Nath Singh had executed General Power of Attorney, copy of which has been brought on record in the Interlocutory Application by way of Annexure-IA/1, the Court is required to deal with the issue.

9. Mere perusal of the contents of the aforesaid General Power of Attorney which is dated 25.12.2004 reveals that it is, in effect, an absolute sale deed where right to sale, transfer etc. of the Kiosk has also been given to the respondent no. 7. The said being in the teeth of the right which exists to

a lessee and most importantly, neither notarised nor registered nor with consent of the Corporation/PRDA, clearly has to be held to be a fraud on the system. Further, in terms of the Deed of Lease-cum-Agreement executed by Onkar Nath Singh with the PRDA, the predecessor-in-interest of the Corporation, no such Power of Attorney was legally permissible. If Onkar Nath Singh had executed the said Power of Attorney, he would equally be responsible for having done that and this itself would be sufficient to cancel the allotment of the Kiosk in favour of Onkar Nath Singh. Further, on a query of the Court as to why the respondent no. 7 had not moved before the Court, if at all he was responsible for running of the Kiosk and was given a Power of Attorney and even after demolition of the Kiosk he has not moved before the Court or the authorities, learned counsel for the respondent no. 7 fairly submitted that it may have been on realisation of the ground realities that the challenge to such action of the Corporation may not be sustained before a court of law.

10. Be that as it may, the Court finds that the respondent no. 7 equally has no basis for any grievance and, most importantly, he never chose to assail any action of the Corporation till date and, thus, as far as he is concerned, no cognizance can be taken by the Court on his pleadings in the present matter.

11. Even otherwise, on merits, as the notice dated 08.06.2019 clearly speaks of there being difficulty in plying of traffic and that the area was required for making provision for Rain Water Harvesting System, the Court finds that the cause is in public interest which shall override private/ individual right. Further, in the notice dated 08.06.2019, it was indicated that the allottees of the Kiosk were encroaching upon the land in front of the Kiosk by keeping on it chairs, tables and other things. Thus, the Court would also refrain from interfering in the matter in its extraordinary, prerogative writ jurisdiction under Article 226 of the Constitution of India.

12. The application, accordingly, stands dismissed in the aforementioned terms.