

(2019) 12 PAT CK 0102

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 18851 Of 2019

Bishwanath Prasad Keshri

APPELLANT

Vs

State Of Bihar Through And Ors

RESPONDENT

Date of Decision : 03-12-2019

Acts Referred:

Citation : (2019) 12 PAT CK 0102

Hon'ble Judges : Ahsanuddin Amanullah, J

Bench : Single Bench

Advocate : Alok Kumar Choudhary, Kulanand, Bindhyachal Singh, Y. P. Sinha

Final Decision : Disposed Of

Judgement

1. Heard learned counsel for the petitioner; learned AC to AAG 7 for the State and learned counsel for the Patna Municipal Corporation (hereinafter referred to as the 'Corporation').

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

"A. A writ in the nature of certiorari for quashing the letter no.-7349 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.-06 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. 06 of the petitioner which has been demolished by the order of the Director, Town Planning Patna Municipal Corporation vide letter no. 7349 dated 8.6.2019.

C. For a writ, order, or direction to the respondents to rehabilitate the petitioner for the illegal demolition of his Kiosk No. 6 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 petitioner was allotted kiosk no. 6 situated at Maurya Lok Complex under the Corporation in the year 2004 for a period of 11 years which expired on 20.08.2015. Though he kept representing for renewal of the lease deed but the same did not materialize and finally on 08.06.2019, he was served the impugned letter dated 08.06.2019, asking him to demolish the kiosk within one week, failing which it would be demolished and cost of the same recovered from him. The petitioner sent a representation through speed post to the above notice on 11.06.2019. However, the kiosk in question was demolished on 16.06.2019.

4. Learned counsel for the petitioner submitted that the basic principles of natural justice which are mandatorily to be followed has been violated. It was submitted that before any drastic action is taken, the person has to be noticed and given an opportunity to reply as to why the proposed action be not taken. It was submitted that the petitioner has represented within three days of the impugned order before the Commissioner of the Corporation but nothing was done and his kiosk demolished. It was submitted that the requirement of following the principles of natural justice is in conformity with the judgment of the Hon'ble Supreme Court in S.L. Kapoor v. Jagmohan reported as AIR 1981 SC 136, the relevant being at paragraph no. 24. It was submitted that the authorities were obliged to consider the representation of the petitioner and pass an order on the same before proceeding with any punitive action.

5. Learned counsel for the Corporation submitted that admittedly the lease expired on 20.08.2015 and the same had stipulated that three months prior to the expiry of the term, the lessee, if he so desires, would give three months prior notice by registered post with A/D to the lessor (Corporation) regarding intention to renew the lease and admittedly in the present case, the first such application was submitted in the office on 10.10.2015 i.e., after almost two months of the expiry of the lease period. Learned counsel further drew the attention of the Court to the content of the order dated 08.06.2019, in which it had been stated that there was difficulty in movement of vehicles and their parking and further that the area was for making provision of Rain Water Harvesting System and also, that beyond the kiosk, on the open area of the Corporation, there had been encroachment by putting up chairs, tables and other items by the petitioner. It was submitted that under any circumstances, the area had to be vacated, which was required for the aforesaid purpose and, thus, the petitioner after expiry of the time granted to him to demolish the kiosk, not having done so, the Corporation had to move ahead with the process. Learned counsel further drew the attention of the Court to Clause 2 of the agreement between the parties dated 09.10.2004, which clearly required the petitioner, on expiry of the period, to deliver vacant possession of the kiosk and remove all goods, furniture and other things.

6. Having considered the facts and circumstances of the case and submissions of

learned counsel for the parties, the Court finds that once the petitioner had made a representation, within three days of issuance of the impugned order dated 08.06.2019, in the least, the Commissioner of the Corporation was required to take a decision on the same. Thus, on the short point of representation of the petitioner being filed well within the time granted to him to demolish the kiosk and no order on the same having been passed, requires interference by this Court.

7. Accordingly, the writ application stands disposed off with a direction to the Commissioner of the Corporation (respondent no. 3) to take a decision on the representation filed by the petitioner and communicated to him through speed post on 11.06.2019, copy of which is at pages 31 and 32 of the present writ application, if already not disposed off, within three weeks from the date of production of a copy of this order before him.

8. The Court would only indicate that it has not expressed any view with regard to the merits of the matter which shall be dealt by the Commissioner of the Corporation without being prejudiced either by the order impugned or the present order, in accordance with law.