
(2004) 04 PAT CK 0092
In the Patna High Court
Case No : C.W.J.C. No. 12962 of 2002

Madan Prasad and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 15-04-2004

Acts Referred:

Citation : (2004) 04 PAT CK 0092

Final Decision : Dismissed

Judgement

Chandramauli Kr. Prasad, J.—This application has been filed for issuance of a writ in the nature of mandamus commanding the Respondents to grant them preference in allotment of shops/stalls proposed to be made at the Railway Feeder Road in west of Mairwa Railway Station. Further prayer made by the Petitioners is to give them the possession of the shops on payment of reasonable cost of construction of the shops.

2. According to the Petitioners they belong to the weaker section of the society and running their business in the stalls in the west of Mairwa Railway Station by the side of the Railway Feeder Road on the land belonging to the District Board for more than seventy years. According to them, the District Board, Siwan had granted them the proper authority and the rent of the shops was determined by it on the basis of the site and the rent used to be paid by them and their predecessor-in-interest. Petitioners assertion is that a notice dated 22.10.2002 was published under the signature of the Deputy Development Commissioner-cum-Chief Executive Officer and the Chairperson of the said District Board, inter alia, conveying that an auction shall be held in the office of the Circle Officer, Siwan on 15.11.2002 for Settlement of 99 shops to be constructed in the west of Mairwa Railway Station upto railway cabin, commonly known as Railway Feeder Road. According to the notice, the minimum development cost fixed for shops of the size of 12" x 10" was Rs. 80,000/- and a monthly rental of Rs. 400/-. The grievance of the Petitioners is that the notice did not indicate that the preference shall be given to the persons doing their business from before in matter of

settlement. Accordingly, prayer of the Petitioners is to direct the District Board to make settlement in favour of the Petitioners after accepting the cost of construction. Their prayer further is to give them preference in the matter of allotment.

3. Counter affidavit has been filed on behalf of Respondent Nos. 3 and 4, i.e. the Chief Executive Officer and the Chairperson of the District Board respectively in which their assertion is that the Petitioners are encroachers over the land of Zila Parishad. But at the same time, answering Respondent Nos. 3 and 4 have stated that when the land of Zila Parishad was lying vacant, Petitioners and their ancestors were given licences for a limited period which was to be renewed from time to time. Their further assertion is that the period of licences is already over and as such, Petitioners are the encroachers and trespassers. In paragraph-8 of the counter affidavit, the answering Respondents have stated that "in case they participate in the such bid and succeed their matter will be taken up first". It has been further averred in the counter affidavit that while fixing the minimum development cost and rent the District Board had taken into consideration the location of the site, cost of the material, labour cost and establishment cost.

4. Mr. Ram Suresh Roy, Senior Advocate, appearing on behalf of the Petitioners submits that Petitioners being the licensee of the Zila Parishad, have the right of settlement in case of construction of the shops at the site where the Petitioners were carrying on their business and hence, the action of the Zila Parishad is illegal. In support of the submission, reliance has been placed on the decision of the Supreme Court in the case of Sodan Singh Vs. N.D.M.C. and Others, and my attention has been drawn to para-41 of the said judgment which reads as follows:

41.--We have already stated that for the purpose of final allotment of the places to the authorised squatters/hawkers as per their seniority and to consider the three options of each person, and for the purpose of deciding the quantum of arrears of tehbazari charges for the period after 1.1.90, we will be nominating a particular authority. Question has arisen as to what procedure he should adopt.

5. Mr. Dhananjay Kumar appears on behalf of Respondent Nos. 3 and 4 whereas the State and its officers are represented by JC to G.P. VI.

6. Mr. Kumar contends that the Zila Parishad had decided to give preference to such persons who were its licensee but the Petitioners are not satisfied with the same. He points out that the cost of the shops has been arrived at taking into consideration the location of the site, the cost of construction, labour cost and the establishment cost and in case the Petitioners participate in the auction and succeed, their matters shall be considered first.

7. Having considered the rival submission, I am of the opinion that the stand taken by the answering Respondents cannot be said to be unjust. The Zila Parishad is proposing to make construction of the shops. They have fixed the amount bearing in mind the cost of development on the basis of location of the site, cost of construction, labour cost and establishment, cost. To meet the

expenditure required; they have invited the persons to participate in auction. They have also undertaken that in case the Petitioners participate in the auction and succeed, their matter shall be considered first. In the facts of the present case, I am of the opinion that the decision taken by the District Board is just and proper and it cannot be said to be suffering from the vice of arbitrariness calling for interference by this Court in exercise of writ jurisdiction.

8. Mr. Roy then submits that the Petitioners shall be entitled to get the settlement on payment of the cost of construction only. Mr. Kumar highlights that for running and maintaining the shops, the District Board will not make construction only but has to deploy the employees for maintenance and supervision. He emphasises that the District Board has to bear the establishment cost also for all these activities and as such, the prayer of the Petitioners for settlement of the shops on payment of cost of the construction only, is absolutely misconceived.

9. Having considered the rival submission I find no substance in the submission of Mr. Roy. The answering Respondents have given the factors which were considered for arriving at the development cost which is on consideration of the relevant material and, therefore, cannot be said to be arbitrary. Hence, the Petitioners' claim that settlement of the shops on payment of cost of construction of the shops only is absolutely misconceived and is fit to be rejected.

10. I do not find any merit in this application and it is dismissed accordingly. The*e shall be no order as to cost.