

(1999) 07 PAT CK 0120
In the Patna High Court
Case No : C.W.J.C. No. 4226/98

Nabhay Kumar Singh

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 21-07-1999

Acts Referred:

Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 — Section 11(2)

Citation : (1999) 3 PLJR 390

Hon'ble Judges : R.M. Prasad, J

Bench : Single Bench

Advocate : Ratan Kumar, for the Appellant; Raman Kumar Mishra, for the Respondent

Judgement

R.M. Prasad, J.—Heard the learned Counsel for the Petitioner and the learned Counsel for the State.

2. The Petitioner is aggrieved by the order of the District Magistrate, Bhagalpur contained in Annexure-9. The grievance of the Petitioner is that he needs his house in ward No. 5 at Radha Rani Road, Adampur, Bhagalpur, but the same has not been derequisitioned despite his representation to the District Magistrate, Bhagalpur.

3. It appears that earlier the Petitioner had tiled a writ petition hearing C.W.J.C. No. 8467/94 for the same relief in which this Court on consideration of the fact that Petitioner had filed representation before the District Magistrate, Bhagalpur and the same had not been disposed of, directed the District Magistrate, Bhagalpur to dispose of the representation within one month from the date of the receipt or production of the copy of the said order. Pursuant to the said order, the District Magistrate has passed the order contained in Annexure-9, whereby he has issued direction to the Sub-Divisional Officer-cum-House Controller, Sadar Bhagalpur to get possession of the house back from unauthorized occupation of one Jadunandan Panday, and take it under his control.--

4. This Court fails to appreciate as to how the District Magistrate could justify the impugned order (Annexure-9) passed by him. Section 11(2)(a) of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 provides that where a servant of the Government in possession of any building as a tenant intends to vacate such building he shall give fifteen day's previous notice in writing of his intention to do so to the landlord and to the District Magistrate who shall under intimation to the landlord, within a week of the receipt of the notice, either allot the building to any other servant of the Government whom the District Magistrate thinks suitable subject to the payment of rent, and the observance of the conditions of the tenancy by such servant of the Government or direct that the landlord shall be put in possession of the building. Proviso to Clause (a) to Sub-section (2) provides that when no such order is passed by the District Magistrate, the landlord shall be deemed to have been put in possession of the building.

5. Learned Counsel for the State failed to point out any order of the District Magistrate allotting the premises, in question, to any other government servant.

6. It is neither the case of the Petitioner nor that of the Respondent that any order of fresh allotment was passed by the District Magistrate since after vacation of the premises in question by Shri N.L. Prasad, the then Judicial Magistrate 1st Class, Bhagalpur. The letter of the District and Sessions Judge, Bhagalpur contained in Annexure-6 to the District Magistrate, Bhagalpur sent on 21st August, 1996 shows that the District Magistrate was given information about vacation of the premises in question by Shri N.L. Prasad, Judicial Magt., Bhagalpur. From the impugned order as contained in Annexure-9, itself, it appears that the premises in question is in unauthorized occupation of Shri Jadu Nandan Pandey. Thus, it is evident that no order was passed by the District Magistrate Within the time fixed in Clause (a) of Sub-section (2) of Section 11 of the Act allotting the premises, in question to any other government servant. Accordingly, in my opinion, the impugned order contained in annexure-9 cannot be sustained and it is, accordingly, quashed. The Petitioner will be deemed to have been in possession since after vacation of the premises, in question, by Shri N.L. Prasad, the then Judicial Magistrate, 1st Class, Bhagalpur. Anybody in the occupation of the premises, in question, without any order from the requisitioning authority or permission from the Petitioner, will be deemed to be in unauthorized possession and the Petitioner will be entitled to take all necessary action for getting the possession of the premises, in question, in accordance with law.