

(1971) 03 PAT CK 0009

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1334 of 1970

Nasiruddin

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 24-03-1971

Acts Referred:

Bihar and Orissa Municipal Act, 1922 — Section 383(3)
Constitution of India, 1950 — Article 226

Citation : AIR 1972 Patna 72 : (1971) 4 PLJR 383

Hon'ble Judges : U.N. Sinha, C.J;K.B.N. Singh, J

Bench : Division Bench

Advocate : Balbhadra Prasad Singh, Radha Raman, Man Mohan, J.P. Sinha, Dinesh Chandra Sinha and Chandra Shekhar, for the Appellant; Shreenath Singh, Standing Counsel No. 1, L.S. Sinha and Shambhu Nath, (No. 11), for the Respondent

Judgement

U.N. Sinha, C.J.—The petitioner has filed this application under Articles 226 and 227 of the Constitution of India praying for the following reliefs:--

(a) That the Government orders dated the 2nd April, 1970 and 1st July, 1970 be quashed and the dispossession of the petitioner from the Kedarnath Market during currency of his lease be declared void and be set aside.

(b) That the authorities be directed to restore the petitioner's possession over the market at once.

(c) Any other reliefs which the petitioner is entitled may be granted to him.

A copy of the order dated the 2nd April, 1970 has been given as Annexure 4 of the application and a copy of the other order said to be dated the 1st July, 1970 has been given as Annexure 5. (The date of Annexure 5 is not very clear, as the order may have been passed earlier, that is to say, the 30th June. 1970.)

2. The relevant facts are as follows:--

It is said that there is a fruit and vegetable market within the municipal area of Gaya Municipality, which is known as Kedarnath Market. This market is annually leased out by the Municipality, by auction, to the highest bidder. On the 4th March, 1970, the Special Officer of the Municipality, which is under supersession, issued a public notice for auction of the market, to be held on the 20th March, 1970, for the financial year 1970-71. On the said date, it is said that the petitioner, along with other bidders, had participated in the auction and his bid was the highest, having gone up to Rs. 72,525/-. A copy of the bid-sheet has been given as Annexure 1. It is alleged that the petitioner has deposited Rs. 18,000/- including Rs. 2,000/- as security money. According to the petitioner, he was put in possession of the market from 1st April, 1970, and by letter dated the 1st April, 1970, written by the Special Officer, the petitioner was directed to deposit some other sums also by the 7th April, 1970. A copy of this letter has been given as Annexure 3.

It is alleged that while the petitioner was awaiting execution of a lease deed, the Special Officer ordered him on the 2nd April, 1970 to hand over charge of the market to the Municipality at once, on the basis of a telegraphic order sent by the under Secretary, Local Self Government Department. A copy of the said order of the Government including the order of the Special Officer has been given as Annexure 4. It is stated in the writ application that the petitioner had filed a title suit with a prayer for ad interim order of injunction, which was granted on the 6th April, 1970. It is alleged that the Munsif trying the title suit vacated the order of ad interim injunction on the 9th June, 1970 and thereafter the Government issued a subsequent order, which has been incorporated in Annexure 5. The substance of the orders incorporated in Annexures 4 and 5 is that by order of the State Government, the Special Officer, Gaya Municipality was to take over Khas possession of Kedarnath Market on the 1st July, 1970, without allowing the petitioner to collect toll from it, and the Special Officer was asked to re-auction the market within a fortnight of the order by giving proper notice to all concerned. There is no denying that the petitioner is not in possession at present., whatever the nature of his alleged possession on the 1st April, 1970.

3. A counter-affidavit has been filed on behalf of the State of Bihar, respondent No. 1, and the main contention raised therein is, that, the Special Officer had altered condition No. 3 of the original notice for auction, just before the actual bidding, thereby enabling the successful bidder, namely, the petitioner of this case to, deposit only one-fourth of the total amount of the bid. According to this respondent, the change in the condition was favourable to the petitioner only, and may other intending bidders must have been put into disadvantage, as the change was made just before the actual bidding, and, therefore, the Government had stayed further action by their impugned letter of April 1970 [Condition No. 3 in the notice was to the effect that the successful bidder had to deposit the highest amount bid with the Municipality within twenty four hours, otherwise, the security deposited would be forfeited]. I may mention at this stage that according to this respondent, it was not admitted that the petitioner had been

given possession of the market by the Municipality, in the absence of a duly executed and registered agreement. The Gaya Municipality has also filed a show-cause petition, in which the petitioner's alleged possession on the 1st April, 1970, has been denied. It is stated therein that the petitioner had not been put in possession by the Municipality, in the absence of the execution of the agreement, and that he had taken possession from the old lessee, which was wrongful. It is further stated in the show-cause petition that the final powers under the Municipal Act was vested in the Local Government, and, therefore, the petitioner had no remedy. The original condition No. 3 referred to above, has also been mentioned in this show-cause petition. The petitioner has filed two rejoinders, but it is not necessary to deal with them separately.

4. For his contentions in support of the case of the State of Bihar, Sri Shreenath Singh has relied upon Section 383(3) of the Bihar and Orissa Municipal Act, which reads as follows:--

"The State Government may set aside any resolution or order of the Commissioners of any municipality, if in its opinion the resolution or order is in excess of the powers conferred by law."

This provision of law has to be read with Section 386 (1) of the Act which runs as follows:--

"When an order of supersession has been passed under the last preceding section, the following consequences shall ensue:--

(a) all the Commissioners, as from the date of the order, vacate their offices as such Commissioners;

(b) all the powers and duties which may, under the provisions of this or any other Act, be exercised and performed by the Commissioners, whether at a meeting or otherwise shall, during the period of supersession, be exercised and performed by such person or persons as the State Government may direct;

(c) all property vested in such commissioners shall, during the period of supersession, vest in the Government."

According to Sri Shreenath Singh, on the supersession of the Gaya Municipality, all the property, which had been vested in the Commissioners of the Municipality, vested in the State Government. Therefore, the latter could reverse the decision of the Special Officer to settle the Kedarnath Market with the petitioner in consequence of the auction held on the 20th March, 1970. According to the learned counsel, the Special Officer, acting u/s 386 (1) (b), had no power to alter the terms of condition 3 of the notice for auction, by permitting the highest bidder to deposit only one-fourth of the bid money instead of the whole amount originally mentioned in the notice for auction.

Having heard learned counsel for the parties on this point, I am of the opinion that there is no force in the contention raised by Sri Shreenath Singh for the

State of Bihar. If at all, the State Government may set aside any resolution or order of the Special Officer u/s 383 (3), if it is of the opinion that the resolution or order was in excess of the powers conferred by law. We have not been shown any order of the State Government giving its opinion that the auction held by the Special Officer on 20th March, 1970, should be made null and void, nor have we been shown anything, to indicate what the Special Officer had done in altering condition 3 of the notice for auction was in excess of the powers conferred upon him by law. All that we have got in Annexures 4 and 5 are the orders of the State Government directing the Special Officer of the Gaya Municipality to take over direct control of the market, not allowing the petitioner to collect toll until further orders and a direction to the Special Officer to "fix bid date for market within a fortnight giving proper notice to all." [This is quotation from Annexure 5]. The matter may be tested thus. If the original notice for auction had stated that the successful bidder will have to deposit one-fourth of the highest bid within twenty four hours thereof will the condition so laid down by the Special Officer be in excess of the powers conferred on him by law ? Sri Shreenath Singh has not been able to point out any provision of law which would have made such a condition an illegal one. Therefore, if the Special Officer had altered this term before the actual bid was held, it cannot be concluded that he had acted in excess of the powers conferred on him by law. It is difficult to appreciate the point taken in the counter-affidavit of the State of Bihar that alteration of condition 3 of the original notice, before the actual bidding, had benefited the petitioner only. The benefit, if any, would have gone to whosoever had become the highest bidder, and, therefore, no change had been made in favour of any particular bidder at all. Therefore, I am of the opinion that the interference made by the State of Bihar by orders issued in Annexures 4 and 5 was wholly uncalled for.

What the result of these orders had been has been mentioned in paragraphs 16, 17 and 18 of the writ petition. It is stated therein that in the night of the 1st July, 1970, at 2.45 a.m. the local authorities wanted to dispossess the petitioners from the market which was objected to by Sri Chandradeo Singh, the Manager, and Sri Ram Narain Singh and Sri Ramji Prasad Singh, two other employees of the petitioner, as a result of which they were arrested by the police at that time. It is stated that thereafter a proceeding u/s 107 was started on the 2nd July, 1970, against the petitioner and some of his employees. It is said that by these methods, the Special Officer, with the help of local authorities, had dispossessed the petitioner from the market on the 3rd July, 1970. The actual arrest of these persons has not been disputed by the State Government, although a different version about the cause has been given in its counter-affidavit. It appears from paragraph 17 of the writ petition, further, that three of the petitioner's employees have been asked to show cause u/s 117 of the Code of Criminal Procedure. Therefore, undoubtedly, by the interference made by the State Government, the petitioner and his men are in trouble, for no fault of the petitioner at all. In such circumstances, this is a fit case in which the orders

incorporated in Annexures 4 and 5 should be quashed.

5. On the question of the other reliefs claimed by the petitioner, the arguments advanced by Sri Lakshman Sharan Sinha appearing for the Municipality are valid to the effect that the petitioner is not entitled to a direction from this court for being restored to possession of the market. Whatever may have been the nature of the petitioner's possession on the 1st April, 1970, if any, when the petitioner has not yet deposited the full amount of bid money, nor has any agreement been executed for the lease for which the auction is being held, the petitioner is not entitled to an order for restoration of possession. It was also a condition of the notice for auction, that, the successful bidder will have to execute an agreement at his own cost. Even in Annexure 3, the petitioner had been asked to execute the agreement and although Annexures 4 and 5 have, in effect prevented the execution of the agreement for the settlement of the market, nevertheless, the petitioner cannot ask for an order from this court to be put in possession. Whatever right the petitioner may have as against the State Government or as against the Municipality, the petitioner's dispossession from the market "during currency of the lease" cannot be declared void and be set aside, as prayed for.

It has been contended by the learned counsel for the petitioner that if his client was ever in possession of the market and he was thereafter dispossessed, he is entitled to be put in possession, even if he was at one time in possession without any title. This argument cannot be accepted in an application under Article 226 of the Constitution, as the petitioner must prove at this stage as to his title or right or interest under which he is entitled to be put in possession. As a matter of fact, the only right with the settlee was to realise "Mahsul" or "Chungi" and that too was dependent on an agreement coming into existence after the auction was held. As the agreement has not yet been executed, it is not possible to allow the petitioner's prayer of restoring the possession of the market. For these reasons, the only relief that is granted to the petitioner is that the orders passed by the State of Bihar incorporated in Annexures 4 and 5 are quashed, leaving the settlement of the Hat in question between the petitioner and Gaya Municipality, The Writ application is, therefore, allowed in part, but in the circumstances of the case, the parties are directed to bear their own costs.

K.B.N. Singh, J.

6. I agree.