

(2019) 12 PAT CK 0002

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 14483 Of 2019

Shiv Shankar Kumar

APPELLANT

Vs

State Of Bihar Through The Principal Secretary And Ors

RESPONDENT

Date of Decision : 02-12-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2020) 1 PLJR 626

Hon'ble Judges : Ahsanuddin Amanullah, J

Bench : Single Bench

Advocate : Alok Kumar Choudhary, Binod Kumar Sinha, Prasoon Sinha, Yogendra Prasad Sinha, Rakesh Ambastha

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the petitioner; learned AC to AAG 7 for the State and Mr. Prasoon Sinha, 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. 7352 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. 10 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. 10 of the petitioner which has been demolished by the order of Director, Town Planning Patna Municipal Corporation vide letter no. 7352 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. 10 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. Learned counsel for the petitioner submitted that he was settled a kiosk in Maurya Lok Complex under the Corporation by allotment letter dated 18.11.1993 and the same was for 11 years. It was submitted that thereafter the petitioner kept representing and paying the charges from time to time and finally by letter dated 18.02.2019, the Corporation directed him to pay arrears of Rs. 3,26,808/-, which was the dues till March, 2018. It was submitted that he deposited Rs. 1,76,808/- on 05.03.2019 and requested for three months time to deposit the remaining amount. He submitted that thereafter by letter dated 08.06.2019, the petitioner was directed to demolish the kiosk allotted to him within one week, failing which it would be so done by the Corporation and the expense incurred shall be recovered from him. Learned counsel submitted that the kiosk was also finally demolished on 16.06.2019. It was submitted that the same is impermissible as a procedure has to be followed in law for dispossessing any person. For such proposition, he relied upon decisions of the Hon'ble Supreme Court in State of U.P. v. Dharmender Prasad Singh reported as AIR 1989 SC 997, the relevant being at paragraph no. 15 and Bishan Das v. State of Punjab reported as AIR 1961 SC 1570, the relevant being at paragraph no. 14.

4. Learned counsel for the Corporation submitted that the lease initially was for 11 years and only with the consent of the lessor, it could be renewed/extended. It was submitted that even after that the petitioner for years and years was not paying the due rent and from time to time after many years, upon notice, he did pay and even finally when the notice was issued to him on 18.02.2019, the due was from the August, 2008 to March, 2018 and despite that only part of the amount has been paid and not up-to-date. Learned counsel submitted that in such view of the matter and also in view of the fact that due to difficulty in plying of vehicles and the area needed for Rain Water Harvesting System the land was required and giving the petitioner one week time to remove the same, on non compliance, the kiosk has been demolished.

5. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court is not inclined to interfere in the matter. First and foremost, the lease was only for 11 years and only with the consent of the lessor i.e., the Corporation, it could have been removed. It is not in dispute that even after expiry of the lease, the same has not been renewed and though the petitioner claims to have paid the rental amount, but after gaps of more than 4-5 years, and even for the last 11 years, he was not paying the rent and finally on 18.02.2019, a notice was issued and pursuant to that also, the full amount has not been paid. Moreover and most importantly, the notice dated 08.06.2019 to the petitioner 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. It is not the case of the petitioner that the kiosk has been allotted to somebody else. Moreover, the notice dated 08.06.2019, was never replied to by the petitioner and even before the Court no objection submitted in terms of such letter has been brought on record. Also, even after hearing the petitioner, the order would have been for him to vacate as the kiosk was required to be demolished for the reasons indicated in the notice. The Court, thus, would not remand a matter only as a formality.

6. Further, the decisions relied upon by the petitioner do not cover the present factual aspect inasmuch as, at the cost of repetition, the present land on which the kiosk of the petitioner stood was needed in public interest, especially for making provision of Rain Water Harvesting System and smooth flow of traffic. 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.

7. Thus, looking at the matter in totality, the Court finds that it should refrain from interfering in the matter in its extraordinary prerogative writ jurisdiction under Article 226 of the Constitution of India. The Court would also note the fact that even after notice to the petitioner on 18.02.2019, for paying the dues amount of Rs. 3,26,808/- from August, 2008 to March, 2018, only a sum of Rs. 1,76,808/- was paid and, thus, even till May, 2019, the remaining amount would obviously be around Rs. 2 lakhs, which would be due and payable by the petitioner which has till date not been paid.

8. For reasons aforesaid, the application stands dismissed.