

IN THE HIGH COURT OF JUDICATURE AT PATNA

(Civil Writ Jurisdiction)

C. W. J. C. No. _____/2013

Narendra Chandra Ghosh. Petitioner.

Versus

The State of Bihar & Others. Respondents.

Sub: *Other miscellaneous*

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GC-12
26/6/13

IN THE HIGH COURT OF JUDICATURE AT PATNA

(Civil Writ Jurisdiction)

C. W. J. C. No. _____/2013

Narendra Chandra Ghosh. Petitioner.

Versus

The State of Bihar & Others. Respondents.

SYNOPSIS

That instant writ application is being filed in this Hon'ble Court for issuance of writ, order, direction for quashing the order dated 03.04.2013 vide Memo no.181-2 passed by S.D.O, Madhepura, by which the S.D.O, has directed respondent No.6, to give possession of Shop No-27 to one Washi Ahmad, which was allotted and under the possession of the petitioner.(Contained in Annexure-5)

And, it is also being filed in the nature of mandamus or any other appropriate writ, order or direction for commanding the respondent authorities to give re possession of the Shop no-27 to the petitioner as he was allotted the shop after depositing the amount in the year 1997 and having possession since then.

Date of Events:

- 30.12.1993 A Notice issued to the petitioner in regards to allotment of the shop and requested for deposit the amount.
- 29.09.1995 Order of writ application C.W.J. C. No. 12815/1993.
- 17.06.1996 Order of Writ application filed by the petitioner and six others.
- 03.04.2013 Order passed by the S.D.O, Madhepura, to take back possession from the petitioner to give another person.
- 17.04.2013 Letter from the Officer of Municipality to respondent no.5

Hence this Writ application.

*Filed through
Nageshwar Prasad
Adv. No. 02998
15.11.13*

IN THE HIGH COURT OF JUDICATURE AT PATNA

(Civil Writ Jurisdiction)

C. W. J. C. No. _____/2013

In the matter of an application under Article
226 of the Constitution of India,

And

In the matter of :

Narendra Chandra Ghosh son of Late Sharda Prasad Ghosh.

Resident of - Ward No.13, Tuniahi Road, P.S- Madhepura, District-
Madhepura. Petitioner.

Versus

1. The State of Bihar.
2. The District Magistrate, District Madhepura.
3. The District Development Officer, District- Madhepura.
4. The Sub Divisional Officer, Madhepura, Dist. Madhepura.

5. The Deputy Collector, Land Reforms, Madhepura.
6. The Circle Officer, Block Madhepura, Dist. Madhepura.
7. Washi Ahmad son of Late Rafi Ahmad
Karpuri Chawk
 Resident of- Ward No. *21*, P.S & District- Madhepura.,
 Respondents.

To,

The Hon'ble Ms. Rekha M. Doshit, the Chief Justice of the
 High Court of Judicature at Patna and her companion Justices of
 the said Hon'ble Court.

The Humble petition on behalf of the petitioner
 named above:

Most Respectfully Sheweth:

1. That, this is an application for invoking the writ jurisdiction of this
 Hon'ble Court for grant of following reliefs:
 - I. For issuance of a writ, order, direction for quashing the order dated
 03.04.2013 vide memo no. 181-2 passed by Sub Divisional Officer,
 Madhepura, (Annexure-5), by which the S.D.O has directed
 respondent no. 6 to vacate the Shop No. 27 which is under
 possession of the petitioner since 1993 and to give the possession to

respondent no-7 namely Washi Ahmad who filed an application before the Chief Minister, State of Bihar, in his Janta Darbar.

- II. For issuance of writ in the nature of mandamus or any other appropriate writ, order, direction to the respondent authorities for re possession the petitioner of Shop No. 27, as the petitioner was allotted the aforesaid shop (Annexure-6)
- III. For grant of any other relief or reliefs as the petitioner may entitle and deem fit and proper.

2. That, the order dated 03.04.2013 passed by respondent no.4 is being challenged on the grounds and questions of law are given below:

- i) Whether, the respondent no.4 has passed the order without considering the fact and nature of the matter?
- ii) Whether, the respondent no-4 failed to consider that the matter has already challenged and order passed in the Hon'ble Court?
- iii) Whether, the respondent no.4 acted arbitrary way without following the principle of natural justice?
- iv) Whether, the respondent authorities' exercising its jurisdiction even after the Hon'ble High Court has passed its order in this matter?

- v) Whether, the impugned order passed by respondent no-5 deprive the petitioner from the possession as it has been allotted in his name?
 - vi) Whether the impugned order passed by respondents is malafide, discriminatory, arbitrary and illegal?
 - vii) Whether the action of respondent no.4 disbelieving the grievance of the petitioner is justified and sustainable under the law?
3. That, the petitioner is a citizen of India and resides within the local jurisdiction of this Hon'ble Court.
4. That, the facts leading to this writ application is that the petitioner is shopkeeper and running its shop under the Nagar Panchayat, Madhepura, in the year 1993 under the scheme of construction of shops by road side 62 Rooms (shops) were constructed near the residential place of the S.D.O, Madhepura, and petitioner allotted shop no. 27 after depositing Rs. 25,871/- for its construction, since then, the petitioner having possession on it.
5. That, prior to construction of the pucca shops the petitioner and other persons were having Kathghara, on the same place where the pucca shops have been made, and the respondent authorities sent a Notice to the petitioner to deposit the amount for construction of the pucca

A true photo copy of the Order dated 03.04.2013 is annexed herewith and marked as Annexure-5 to this writ application.

14. That, the Office, Nagar Parishad, Madhepura, through its Officer, sent a letter vide letter no. 392 dated 17.04.2013, to the respondent no-6 in which its mentioned that the shop which is situated in front of the residence of the S.D.O, Madhepura, Shop No. 27 has been allotted to the petitioner, and in the light of Hon'ble High Court order requested to the respondent no. 5 to give possession to the petitioner.

A true photo copy of letter no. 392 dated 17.04.2013, is annexed herewith and marked as Annexure-6 to this writ application.

15. That, it is most respectfully stated and submitted that even after several order of Hon'ble High Court, the respondent authorities illegally vacated the shop no.27 from the possession of the petitioner.

16. That, the petitioner is poor man and he has no other shop since long he has been depending upon the shop in question.

17. That the order passed by the respondent no-4 is quite malafide, arbitrary and violation of the constitutional of India and mandatory provision of law made in this regard.

कार्यालय,
जिला ग्रामीण विकास अभिकरण,
मन्सूरगढ़

:- नोटिस:-

सेवा में,

श्री श्री राजेश चंद्र शर्मा
..... (कॉ. 5-2)

एतद द्वारा सूचित किया जाता है कि अनुमण्डल कार्यालय के आगे
पी० डब्ल्यू डी० रोड के पश्चिम निर्मित 48 दुकान का आवंटन आपके नाम कर दिया
गया है। रीलिंग शटर सहित उक्त दुकान को कुल लागत मो०/-25,871=00 रुपयों का
हजार आठ सौ एकदत्तर 871 मात्र है। जिसके विरुद्ध मो०/-1,900/-
..... जमा किया गया है तथा मो०/11,871/-
..... अवशेष है।

अतः दिनांक-31.12.94 तक अवशेष राशि अधोहस्ताक्षरी के कार्यालय में
जमा कर दे अन्यथा आवंटन रद्द कर दिया जाएगा। राशि जमा करने समय पूर्व जमा
राशि का श्री रसोद साथ लेते आएं।

उप विकास आयुक्त,
मन्सूरगढ़।

30.12.93

25,871/-

ORDER WITH SIGNATURE

Office notes as to action (if any) taken on order

contd/-

the date of receipt/production of a copy of this order. The authorities allotting the shops shall also take into consideration the deposits already made by the petitioners. If any for the purpose of such allotment. It is further made clear that no further allotment made in favour of respondent no. 1 is concerned, the shops should not be disturbed.

xx xx After this order the impugned notice has been issued asking the petitioners who were earlier allotted the shops to vacate the same.

Learned counsel for the petitioners has submitted that this Court never directed the Madhopura administration to evict the persons who were already allotted the shops to accommodate the writ petitioners. On the other hand, ~~the~~ in view of the undertaking given by the Collector that he is ready to hand out the vacant shops to the petitioners, this Court directed the authorities to allot the shops to the intervenor respondents. This Court never directed to evict the persons who have already been allotted the shops to accommodate the petitioners of that writ application, and as such the direction the direction in the impugned notice to vacate the shops is not permissible in law.

Learned counsel for the intervenor respondents as well as the Municipality on the other hand submitted that this Court directed the authorities to settle the shops to the intervenor respondents which are in front of the house of the Sub-divisionary Magistrate and the said order cannot be carried out unless the petitioners are evicted from the shops. It was also submitted that this Court has directed the authorities to consider the deposits already made by the petitioners while considering the question of allotment of shops to the intervenor respondents.

LV

Date of Order

ORDER WITH SIGNATURE

Office notes (if any) taken on order

Respondent/-

From the counter affidavit filed by the Municipality, it is clear that the correct statement was not made in the aforesaid writ application in the sense that in the said writ application it was mentioned that all the sixty two shops are on 25 ft. wide road whereas in the present case in the counter affidavit it is stated that only 48 shops are on 25 ft. wide road and other shops are on the side road. On the basis of the statement made in that case on behalf of the Municipality a direction was given to allot the intervenor respondents the shops on the road in front of the house of the Subdivisional Magistrate.

Be that as it may be, the question which falls for determination is as to whether this Court by the aforesaid order which has been annexed as Annexure-3 has directed the authorities to allot the shops to the intervenor respondents after evicting the persons who were already allotted the shops. From the order which has been extracted above it appears that the statement in the affidavit was made that the authorities will allot the vacant shops to the intervenor respondents out of the sixty two shops and in taking into consideration the aforesaid undertaking this Court directed to allot the shops to the intervenor respondents on 25 ft. road.

In my view, the said order means that the intervenor respondents has to be allotted the shops only if the shops are vacant. That order cannot be

(7)

of Order

ORDER WITH SIGNATURE

Office notes as to action

interpreted to mean that persons who are already in possession of the shops should be dispossessed to allot the same to the intervenor respondents. In that view of the matter, the direction issued by respondent no.2 (Special Officer) is without jurisdiction as this Court had never directed the authorities to dispossess the persons who were already in possession of the shops. Accordingly, the order notice contained in Annexure-2 is quashed.

It is made clear that in view of the undertaking given by the respondent Municipality it has to carry out the direction given by this Court and in case the order is not carried out the intervenor respondents may pursue the appropriate remedy available in law.

With the above aforesaid observation this application is disposed of.

Sd/- Nagendra Rai, (J)

Ganesh Kumar

Authorised U/S 79 of LUN 1970

Sunil Kumar

3-6-2022

93-3-9V28

19

मधेपुरा नगर



अनुमंडव परिषद

दुकांन-२१

No. 2857

Date 21-2-2013

RECEIVED From महेन्द्र चन्द्र व्याप २५० ग्रामिकाप

Rupees (in words) २५० पचास रूपय मात्र

on account of ७-१९-२०१३

Rs. २५०

म
७-१९-२०१३
मधेपुरा नगर परिषद

Patna City-2002

Annexure - 4/1

20

Municipal Form No. XXIX Misc. Receipt (Rule 97)

मधेपुरा नगर परिषद्



3184 अथवा 3185

2872

दिनांक 27

No

Date 25 03 2013

RECEIVED From नरेंद्र चौधरी 2000 गांधी स्कोला

Rupees (in words) नौ हजार पचास रुपये मात्र

on account of फरवरी 2013

Rs. 3350

25/03/2013
Cashier
मधेपुरा नगर परिषद्

G.P.P., Patna City - 2508

कार्यालय नगर परिषद, मधेपुरा।

संक्रांक 352/

सेवा सं.

कार्यपालक नगरपाली
नगर परिषद, मधेपुरा।

सेवा सं.

मूगि सुन्दर उम रावत
मधेपुरा, सदर।

मधेपुरा, तिथि 17 अप्रैल 2013

विषय - अनुमण्डल पदाधिकारी, मधेपुरा के निवास के आगे अवस्थित दुकान संख्या- 27 के सम्बन्ध में।


पताशुभ

उपर्युक्त विषयक सारंग में कहना है कि अनुमण्डल पदाधिकारी, मधेपुरा के निवास के आगे अवस्थित दुकान संख्या- 27 नगर परिषद, मधेपुरा का है, जो नरेन्द्र चन्द्र घोष को अन्वेषण एवं प्रतिवादी वसी अहमद द्वारा पूर्व में CWJC No.- 12815/93 द्वारा किया गया था। निवास माननीय उच्च न्यायालय द्वारा आदेश पारित किया गया कि किसी दुकान को खाली करवाकर किसी अन्य को दुकान आवंटित नहीं किया जाय। पुनः वसी अहमद द्वारा माननीय उच्च न्यायालय से अवमानना वाद दायर किया, जो खारिज हो गया है। छायाप्रति संलग्न।

ऐसी स्थिति में आपको द्वारा निम्न नगर परिषद से सहमति लिए वसी अहमद के पक्ष में दुकान को खाली कराया गया है, जो सही नहीं है, साथ ही माननीय उच्च न्यायालय द्वारा CWJC No.- 9285/95 में उचित आदेश का उल्लंघन है। यह सर्वज्ञानीय है कि यह दुकान नगर परिषद का है। दिनांक 11.04.2013 को गीनार्डल पर हुई चर्चा के क्रम में आपने वस्तुस्थिति से अवगत करा दिया गया है।

अतएव अनुरोध है कि यथाशीघ्र श्री नरेन्द्र चन्द्र घोष के पक्ष में दुकान बन्द दिवाना की क्रिया की जाय।

विश्वासभाजन

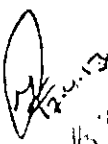
 कार्यपालक नगरपाली

नगर परिषद, मधेपुरा

आपको 352/ नगर परिषद, मधेपुरा, दिनांक 17.04.13

प्रतिलिपि अनुमण्डल पदाधिकारी, मधेपुरा को सूचनार्थ एवं आवश्यक कार्यार्थ प्रेषित।

प्रतिलिपि निम्न पदाधिकारी मधेपुरा को सदर सूचनार्थ प्रेषित।

 नगर परिषद, मधेपुरा
17/04/13

अनुमंडल कार्यालय, मधेपुरा ।

-:आदेश:-

आवेदक वरीय अहमद द्वारा गान्धीय मुख्यमंत्री के जनता दरवार में जॉब आवेदन पत्र की जॉब भूमि सभार उप समाहर्ता, मधेपुरा के द्वारा की गयी। जॉब आवेदन के आलोक में मां० वरीय अहमद का अनुमंडल पदाधिकारी, मधेपुरा के आवास से सड़क पूर्व एवं मेन रोड से पश्चिम बने दूकान संख्या-27 में विधिवत दखल दिलाने हेतु पुलिस अधिकारी/पुलिस बल की प्रतिनियुक्ति हेतु भूमि सुधार उप समाहर्ता, मधेपुरा द्वारा सूचना विद्यमान है।

अतः दिनांक 05.04.2013 को दूकान संख्या-27 में विधिवत दखल दिलाने हेतु उक्त अवसर पर विधि व्यवस्था स्थापना करने हेतु श्री हृदय नारायण दास, अंचल अधिकारी, मधेपुरा की प्रतिनियुक्ति सशस्त्र बल के प्रभारी दण्डाधिकारी के रूप में एवं श्री राजेश रोशन, भूमि सुधार उप समाहर्ता, मधेपुरा की प्रतिनियुक्ति वरीय दण्डाधिकारी के रूप में जॉब आवेदन पत्र प्राप्तानुगत दण्डाधिकारी को आदेश दिया जाता है कि उक्त अवसर पर पर्यवेक्षक विधि व्यवस्था बनाये रखना सुनिश्चित करेंगे।

इस आदेश की सूचना सभी संदर्भितों को दी जाए।

H0 / --

अनुमंडल दण्डाधिकारी,
मधेपुरा ।

दिनांक 18/4/13

दिनांक 18/4/13

अंचल अधिकारी, मधेपुरा को सूचनार्थ एवं अनुपालनार्थ प्रेषित।

श्री राजेश रोशन, भूमि सुधार उप समाहर्ता, मधेपुरा को सूचनार्थ एवं आवश्यक कार्रवाई हेतु प्रेषित।

आवेदक मां० वरीय अहमद को सूचनार्थ एवं अनुपालनार्थ प्रेषित।

मां० शशी अहमद/श्री नरेश चन्द्र घोष, मधेपुरा को सूचनार्थ एवं अनुपालनार्थ प्रेषित।

जॉब आवेदन, मधेपुरा को सूचनार्थ एवं आवश्यक कार्यार्थ प्रेषित।

अनुमंडल पुलिस पदाधिकारी, मधेपुरा को सूचनार्थ एवं आवश्यक कार्रवाई हेतु प्रेषित।

जॉब आवेदन, मधेपुरा को सूचनार्थ एवं अनुरोध है कि उक्त अवसर पर पुलिस पदाधिकारी/पुलिस बल/महिला पुलिस बल की प्रतिनियुक्ति करने की कृपा की जाय।

जिला दण्डाधिकारी, मधेपुरा को सूचनार्थ एवं अनुमोदनार्थ समर्पित।

अनुमंडल दण्डाधिकारी,
मधेपुरा ।

78

13348-C

3-6-2002, 3-6-2002, 3-6-2002, 3-6-2002, 3-6-2002

Application
Section
Folio
Other items if any

0-33
2
4-40

7.73

Sunil Kumar

3-6-2002

Copyist Department 3/6

Sunil Kumar

3-6-2002



23/9/95 - 27/9/95 - 28/9/95 - 29/9/95

IN THE HIGH COURT OF JUDICATURE AT PATNA.

ORDER SHEET

Civil No. 13815 of 1993

Shiv Narayan Prasad Sah, & ors, Vs. The State of Bihar & ors

Serial No.	Date of	ORDER WITH SIGNATURE.
of order.	order.	

15. 15.9.95. After hearing learned counsel for the parties this writ petition is disposed of on the basis of the undertaking given by one Mr. A Z. Ahmad on behalf of Collector, Mauhupura on an affidavit filed in Court on 15th September, 1995.

In the said affidavit it has clearly been stated that 62 shops in one block have been constructed having on its front a 25 ft. wide road. These shops have been constructed in front of the house of the Subdivisional Officer. It has also been stated that respondent is ready to lease out the vacant shops to the petitioners from those 62 shops.

It is not in dispute that out of eight petitioners one has been already allotted a shop namely petitioner no. 5 Abdul Hakim. In respect of the remaining seven petitioners shops should be allotted out of the said shopping complex. It is further stated that the road facing shops should be allotted to the petitioners in the ground floor within a period of one month from the date of receipt/production of a copy of this order. The authorities allotting the shops shall also take into

711

4-12

of Order

ORDER WITH SIGNATURE

Office notes as to action (if any) taken on order

C.M.J.C.No.0285/1995

Abul Kalam Siddiq & Ors. vs. The State of Bihar & Ors.

17.11.95

Honble.

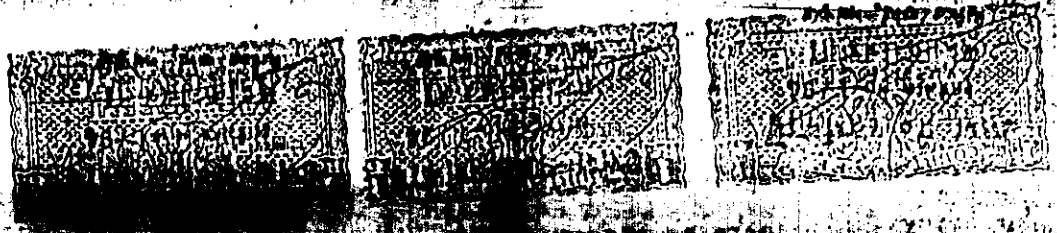
The present writ application has been filed for quashing the notice contained in letter no.235 dated 4.11.1995 by the Special Officer, Madhepura Municipality asking the petitioner to vacate the shops in pursuance of a direction given by this Court in C.M.J.C.No.12011/95

The facts which are not in dispute are that the Madhepura administration decided to construct the shops on the road in front of the house of the Subdivisional Officer and accordingly sixty two shops were constructed of 20 ft. wide road. The shops were allotted to several persons including the petitioner. The intervenor-respondents were not allotted the shop by administration as a result of which they came to

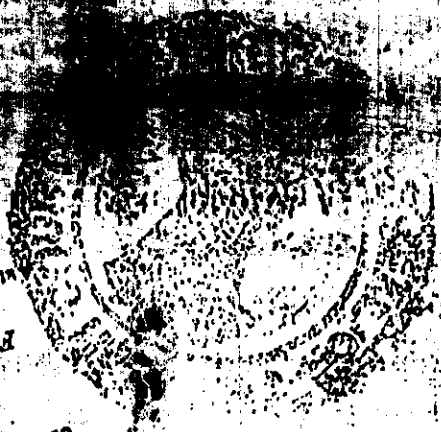
the Court in C.M.J.C.No.12015/1995 and this Court disposed of the writ application on 15.9.95 in view of the averments given by the Collector, Madhepura in an affidavit filed on 15th September, 1995. This Court passed the following order;

"In the said affidavit it has been clearly stated that 62 shops in one block have been constructed having on its front a 20 ft. wide road. Those shops have been constructed in front of the house of the Subdivisional Officer. It has also been stated that the respondent is ready to lease out the vacant shops to the petitioners from those 62 shops.

It is not in dispute that out of eight petitioners one has been already allotted a shop namely petitioner no.1 Abul Kalam. In respect of the remaining seven petitioners shops should be allotted out of the said shopping complex. It is further stated that the road facing shops should be allotted to the petitioners in the ground floor within a period of one month from the



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SD/- (A.K. Gargu)

This application is thus disposed of.
There will be no order as to cost.

not be disturbed.
Favour of respondent no. 2 is concerned. The same should
it is (whether made clear that some order made in

3/11/95
Sd/-
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Sd/-
Sd/-

For without
Date: 11-12-95

18. That the impugned order passed by respondent no-4 has compelled the petitioner to suffer irreparable loss and injury and it has occasioned a failure and miscarriage of justice.
19. That the petitioner has no efficacious and expeditious remedy except by way of filing this writ application.
20. That the impugned order passed by the respondent no-4 is against the mandatory provision of law as such fit to be quashed.
21. That the petitioner has not moved before this Hon'ble Court against the impugned order previously.

It is, therefore, prayed that your lordships may be pleased to issue a Rule NISI asking the respondents to show cause as to why the prayer made in para 1 of this application be not allowed and after the return of the Rule, considering the show cause, if any, filed by the respondents and hearing the parties allow the application and make the Rule absolute.

AND/OR

Pass such other order or orders as may deem fit and proper in the facts and circumstances of the case.

And for this, the petitioner shall ever pray.

Affidavit

I, Narendra Chandra Ghosh, aged about years son of Late Sharda Prasad Ghosh, Resident of - Ward No.13, Tuniahi Road, P.S- Madhepura, District- Madhepura, do hereby solemnly affirm and state as follows:

1. That I am petitioner in this case as such am well conversant with the facts and circumstances of the case.
2. That the contents of this application as well as affidavit have been read over explained to me in Hindi which I have fully understood and same are true to my knowledge.
3. That the statement made in paragraph nos.4, 6, 7, 9, 11 and 15 are true to my knowledge and those of the statements which are contained in paragraph nos. 5, 8, 10, 12, 13 and 14 are true to my information derived from the records of the case and the rest of the statements are by way of submissions.
4. That the annexure are the true/photo copies of their respective originals.

निवेदनकर्ता

shops, and the petitioner deposited the same amount of Rs. 25,871/- in different installment.

A true photo copy of the Notice dated 30.12.1993 is annexed herewith and marked as Annexure-1 to this writ application.

6. That, through aforesaid Notice, the petitioner has been allotted the shop no. 27 and after construction of the shop the petitioner handed over the key of the shop, in the same manner all Kathghara holders got key of shops which were allotted to them.
7. That, it is most respectfully submitted that, the private respondent and some other, also deposited the cash for construction who were not Kathghara holder on expectation that if any kathghara holder fails to deposit amount.
8. That, the persons including private respondent, who were not Kathghara holders but deposited the amount, did not get any constructed shop, and they preferred to file writ application before this Hon'ble Court vide C. W. J. C. No. 12815/1993, in which they claimed that the shops which constructed should be allotted them. In this writ application the Hon'ble High Court was pleased to dispose of the writ

A true photo copy of the order dated 17.06.1996 in C.W.J.C.No.9285/1995 is annexed herewith and marked as Annexure-3 to this writ application.

11. That, it is most respectfully submitted that Washi Ahmad (wanting shops) has got no leg to stand and the persons who had already been allotted shops cannot be evicted from their possession, but Washi Ahmad in habit to file petition before every officer and political personalities.

12. That, the petitioner been having possession of the Shop No.27 and running his shop and regularly paying the rent to the Madhepura Municipality according to the rule and provision.

A true photo copy of the rent receipts is annexed herewith and marked as Annexure-4/1 to this writ application.

13. That, the Washi Ahmad also gave a petition in Janta Darbar, of Chief Minister, State of Bihar, in this regard, and on the basis of the petition and on the recommendation of the respondent no-6, the S.D.O, Madhepura passed the impugned order.

petition observing that those seven persons should be allotted the seven shops which were vacant.

A true photo copy of the order dated 29.09.1995; in C. W. J. C. No. 12815/1993 is annexed herewith and marked as Annexure-2 to this writ application.

9. That, in compliance to the aforesaid order the Special Officer, Madhepura gave notices to the petitioner and six other shop-holder to vacate the shops, who were already allotted shops and who were handed over the key of shops and who were earlier having their Kathghara.
10. That, the petitioner and other six persons challenged the notices before this Hon'ble Court vide C.W.J.C.No.9285/1995 to quash the said notice and the Hon'ble Court heard the matter at length further the order of previous C.W.J.C.No.12815/1993 also was placed and the Hon'ble High Court disposed of the said writ case quashing the said notices of vacating shops and observing that in C.W.J.C.No. 12815/1993, the Hon'ble Court had never ordered to allot shops of such persons who had already been allotted shops which were vacant.