

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2121 of 2024

1. Bipin Trivedi Son of Late Baleshwar Prasad Trivedi Resident of Flat No. 303, Ram Janki Enclave, Opp. Shakha Field, Road No. 7, Rajendra Nagar, District- Patna- 800016.
2. Anjana Trivedi W/o Bipin Trivedi Resident of Flat No. 303, Ram Janki Enclave, Opp. Shakha Field, Road No. 7, Rajendra Nagar, District- Patna- 800016.

... .. Petitioner/s

Versus

1. State Of Bihar through Secretary, Department of Revenue and Land Reforms, Government of Bihar, Patna.
2. Secretary, Department of Revenue and Land Reforms, Government of Bihar, Patna.
3. Patna Municipal Corporation through Municipal Commissioner, Patna having its registered office at Maurya Lok Complex, Opposite Kotwali Police Station, P.S.- Kotwali, Patna, 800001.
4. Municipal Commissioner, Patna Municipal Corporation, Maurya Lok Complex, Opposite Kotwali Police Station, P.S.- Kotwali, Patna- 800001
5. Land Estate Officer, Patna Municipal Corporation, Maurya Lok Complex, Opposite Kotwali Police Station, P.S.- Kotwali, Patna- 800001

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Siddhartha Prasad, Advocate
For the Respondent/s : Mr. Prasoon Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT

Date : 20-08-2024

Heard Mr. Siddhartha Prasad, learned counsel for the petitioner and Mr. Prasoon Sinha representing the Patna Municipal Corporation.

2. The present writ petition has been preferred for the grant of following relief/s:-

“The present writ petition has been preferred for quashing of Letter No. 14515 dated 28.11.2023 issued by the



Land Estate Officer, Patna Municipal Corporation whereby and whereunder the petitioners have been asked to deposit Rs. 61,25,689 (Sixty One Lacs Twenty Five Thousand Six Hundred and Eighty Nine) for transfer/mutation of their names in place of the vendors of the petitioners from whom the petitioners have purchased Plot No. 157, Block-B, Type-C, area 377.22 Sq. yards situated in Rajendra Nagar area of Patna town. Further the petitioners humbly pray that the respondent Patna Municipal Corporation may be directed to transfer the names of the petitioners in place of their vendors without insisting for depositing illegal and arbitrary fee. The petitioners also pray for any other relief(s) that the petitioners are entitled to in the facts and circumstances of the case.”

3. Yet another case, this time a couple as aggrieved persons, once again the demand notice, the issue remains the same, whether the **Patna Municipal Corporation** (henceforth for short **‘the PMC’**) is entitled to demand ‘labhansh’ (dividend) as per the agreement that was entered into by the parties in the year 1967 with regard to a **plot no. 157, Rajendra Nagar, Block No. B (Type C)** (admeasuring an area of 377.22 square yards) in the District of **Patna** which went to the share of



Dr. Ranvir Kumar from the original allottee, Punya Kala Sinha or not.

4. The undisputed facts are that the original allottee was Punya Kala Sinha with whom an agreement was made. It is to be noted that in terms of **Rule 20** of the **Patna Regional Development Authority, Rules 1978** (henceforth for short ‘**the Rules**’), the plots that were leased out to the allottee, Vide clause 11 of the lease deed, there was restriction on the subsequent transfer and the said clause read as follows:

“Clause 11: That except with the previous consent of the First Party in writing and subject to such terms and conditions as may be prescribed by the First Party, the Second Party shall have no right within ten years of the date of this indenture to transfer by way of sale, exchange or otherwise the aforesaid plot including the structure constructed thereon or the right, title or interest therein, but, no such consent shall be required in matters of gift in favour of an heir of relation or of Will in respect of the said properties.”

5. This Court would also like to incorporate **Rule 20** of ‘**the 1978 Rules**’ which read as follows:

“Transfer of land leased by the



Authority. No plot or part thereof leased by the Authority shall be transferred by sale or gift within a period of ten years from the date of lease without the permission of the Authority:

Provided that the intention to transfer of land along with the conditions of lease shall be indicated in writing to the Authority well in time before the transfer of the land takes place even in cases where a period of ten years have expired:

Provided further that the Authority shall have the first right to resume the land after reimbursing the premium paid by the allottee together with an interest at the rate of 6 per cent per annum on the premium paid by the allottee:

Further that where the Authority grants permission for the transfer of land, the allottee shall pay a mutation fee equal to 50 per cent of excess of sale premium paid by him. price over the This however, shall not be less than 10 per cent of the premium charged by the Authority by leasing out the plot:

Provided further that the bifurcation of any land property leased by the Authority shall not take place or its use converted from the use for which the land was leased without the prior approval of the



Authority as required under Section 32 of the Ordinance.”

6. The two petitioners herein, a couple, by way of registered (transfer of lease hold rights by way of sale) deed dated 17.01.2011, got the plot transferred in their names from Dr. Ranvir Kumar (**Annexure-P/3 to the petition**).

7. Learned counsel for the petitioners submit that thereafter, continuously they preferred petition beginning 07.06.2011 when a receipt of Rs. 1,000/- was issued by the then **Patna Regional Development Authority** (now dissolved) (henceforth for short '**the PRDA**' in their favour. He submits that a decade later, letter no. 14515 dated 28.11.2023 was sent by the Estate Officer of 'the PMC' by which taking note of the transfer, direction has been made to pay Rs. 61,25,664/- as mutation fee (**Annexure-P/9 to the petition**).

8. The Court deems it appropriate to bring on record the letter no. 14515 dated 28.11.2023 of 'the PMC' which read as follows:

पटना नगर निगम

Letter No./पत्रांक:14515

Patna Municipal Corporation

Date/दिनांक: 28/11/2023

File No.- XIS-165/61

सेवा में,

श्री बिपिन त्रिवेदी, पिता-स्व० बालेश्वर प्रसाद त्रिवेदी
एवं श्रीमती अंजना त्रिवेदी, पति- श्री बिपिन त्रिवेदी
भूखण्ड संख्या-157C, ब्लॉक-B, टाइप-C



राजेन्द्र नगर, पटना

विषय:— राजेंद्र नगर स्थित भूखण्ड संख्या-157C, ब्लॉक-B, टाइप-C का नामान्तरण के संबंध में।

महाशय,

निदेशानुसार उपर्युक्त विषय के आलोक में सूचित करना है कि राजेंद्र नगर स्थित भूखण्ड संख्या-157C, ब्लॉक-B, टाइप-C का नामान्तरण हेतु आपका आवेदन पटना नगर निगम को प्राप्त है। प्राप्त आवेदन के आलोक में म्युटेशन फी की कुल अधियाचित राशि मो0-61,25,664/- रु0 एवं मालगुजारी के मद में वर्ष 2022-23 से 2023-24 तक बकाये राशि पर विलम्ब सूद सहित मो0- 25/- रुपये, अर्थात् कुल राशि मो0- 61,25,689/- रु0 का भुगतान किया जाना है।

अतः आपको सूचित किया जाता है कि पत्र प्राप्ति के 15 दिनों के अन्दर मो0-61,25,689/- रु0 (इकसठ लाख पच्चीस हजार छह सौ नवासी) रुपये निगम कोष में जमा करना सुनिश्चित करे, ताकि आपके आवेदन के आलोक में नियमानुसार कार्रवाई किया जा सके।

विश्वासभाजन

ह0/-

भू-सम्पदा पदाधिकारी

पटना नगर निगम

9. Learned counsel for the petitioners submit that a perusal of the demand notice would show that deliberately the details under which rules, the payment has been sought for has not been incorporated. His submission is that it is because, aggrieved by the similar such demand, earlier, one **Sanjay Singh** had approached the Patna High Court in **CWJC No. 13886 of 2011 (Sanjay Singh Vs. The State of Bihar & Ors.)** which was disposed of on **10.07.2013** and the learned Single Judge after taking note of **Rule 20 of 'the 1978 Rules'** held as follows:

"Thus, in my opinion, the requirement of payment of 50% of the profit earned would only arise when permission is



also required to be taken from the authority concerned. Where such permission is not required, in my considered opinion, requirement of payment of mutation fee equivalent to 50% of the earned profit would also not be required. That apart, it is well settled that the parties would be bound by the terms and conditions of the agreement. In such situation when the deed of lease does not disclose any requirement of payment of 50% of amount earned by the concerned person on making transfer of the plot concerned even within ten years, in my opinion, by operation of rule introduced subsequently, such condition cannot be changed compelling the lessee to pay such amount. Section 93 of the Bihar Regional Development Authority, 1974/81 would be relevant for understanding the aforesaid proposition. Section 93(1)(d) clearly discloses that notwithstanding the repeal of Bihar Town Planning and Improvement Trust Act, 1951 in view of the provisions contained in Section 93(1) of the Act. anything done or any action taken in the exercise of any power conferred by or under the said Ordinance, presently the Act, shall be deemed to have been done or taken in exercise of powers conferred by or under the present Act. Similarly Section 93(2) provides



that anything done or any action taken under the Bihar Town Planning and Improvement Trust Act, 1951, so far as it is not inconsistent with the provisions of the present Ordinance or Act, would be deemed to have been done or taken under those provisions itself. Sub Section 2(c) of the aforesaid Section provides that all debts, obligations and liabilities incurred, all contracts entered into and all matters to be done by, with or for the improvement Trust or Town Planning Authority and the Controlling Authority shall be deemed to have been incurred, entered into or engaged to be done by, with or for the authority. Not only that, Sub Section 2(i) provides that any plot held by any person as lessee from the Improvement Trust under a registered deed of lease for residential purpose shall be deemed to have been vested in him as perpetual lease from generation to generation on payment of fee to the authority at the rate of one rupee per square meter.

From conjoint reading of the aforesaid provisions, one would come to a definite conclusion that the deed of lease executed by the Patna Improvement Trust would be considered to have been executed by the P.R.D.A. itself and, thus, it would also be bound by the terms and conditions set



forth in the deed of lease, i.e.. Annexure-1.

Thus, in my opinion the PRDA cannot ask the allottee to part with 50% of the earned amount even in view of the Rule 20 of PRDA (Disposal of Land) Rules 1978 also as that would be required only if the transfer is being made within ten years from the date of execution of deed of lease in favour of the allottee, which is admittedly not been done in the case in hand.

Accordingly, the issue no.(i) is answered in affirmative and issue no.2 is answered in negative. The writ petition stands allowed and the impugned communication contained in Annexure-5 is quashed."

10. It is his submission that aggrieved by that order, subsequently, 'the PMC' preferred **LPA No. 512 of 2016 (The Commissioner, Patna Municipal Corporation Vs. Sanjay Singh and Others)** which came to be dismissed on **13.12.2017** by the Division Bench and the short order read as follows:

" A delay of 2 years and 6 days is being explained away as routine bureaucratic delay.

There is no special privilege for any organization sans the rule and the law with regard to time fixed for preferring the appeal. A modest and a reasonable kind of



delay is always condonable but no delay of such kind where there is no cogent and valid explanation coming as to what took them so long in preferring the appeal. Obviously, someone in the Corporation was geared up to help the petitioners to beget the benefits of the judgment, that anyway he will beget since the limitation petition is dismissed along with the appeal for obvious extended delay on their part.

The fall out of the decision and the liability, which may be created upon the Corporation, can be recovered from the people, who were responsible in delaying the process in preferring the appeal."

11. Still aggrieved, 'the PMC' preferred **SLP (C) No. 12463 of 2018 (the Commissioner, Municipal Corporation & Anr. Vs. Sanjay Singh & Ors.)** before the Hon'ble Supreme Court of India which was dismissed on **14.05.2018** and the order of the Hon'ble Apex court is incorporated herein below:

"Upon hearing the counsel the Court made the following order:

The Special Leave Petition is dismissed.

Pending application stands disposed of."



12. It is his submission that despite the matter having been closed by Hon'ble the Supreme Court in the year 2018 itself, the demand is continuing though 'the PMC' has now stopped incorporating the provisions under which such demand is/are being made. He concludes by submitting that the letter no. 14515 dated 28.11.2023 issued by 'the PMC' be quashed.

13. Mr. Prasoon Sinha is representing 'the PMC' and a counter affidavit has been filed on behalf of respondent No. 3 to 5 in which after detailing out all the provisions of the Bihar Municipal Act, 2007, **in Paragraph 8**, five lines have been incorporated answering to **Sanjay Singh** (supra) case which read as follows:

*8. "That so far as the facts involved in the case of **Sanjay Singh** decided by this Hon'ble Court on 10.07.2013 in **CWJC No. 13886 of 2011**, it is humbly submitted, are different from the facts of the instant matter."*

14. A perusal of the said paragraph shows that the respondent authorities have chosen to deliberately bypass/ignore the points raised by the learned counsel for the petitioner inasmuch as it has failed to elaborate further as to how the case of **Sanjay Singh** (supra) is different from the present case. In



other words, the author of the affidavit by not differentiating the present case *vis a vis* **Sanjay Singh** (supra) case has virtually accepted the contention of the petitioners.

15. This Court has gone through the facts of the case, the materials on record as also the submissions put forward by the parties. Admittedly, the learned Single Judge in **Sanjay Singh** (supra) case clearly held that ‘**the PRDA**’ (as ‘**the PMC**’ then was) cannot ask the allottee to part with the amount even in view of the **Rule 20** of ‘the Rules’ as that was restricted to the transfer being made within 10 years from the date of execution of lease deed, which has admittedly not been done in the case in hand. ‘The PMC’ belatedly challenged the order both before the Division Bench of Patna High Court as also the Hon’ble Apex Court which were negated.

16. It is unfortunate that ‘the PMC’ despite being a responsible body and after loosing the battle in **Sanjay Singh** (supra) case right from the learned Single Judge to the Division Bench of Patna High Court and finally before the Hon’ble the Apex Court is still continuing with the draconian demand from innocent citizen who with their hard earned money try to purchase a piece of land of ‘the PMC’ in the State capital. In the considered opinion of the Court, this demand comes in the



category of harassment.

17. It is further unfortunate that 'the PMC' has not closed the chapter six years after passing of the order by the Hon'ble Apex Court when it dismissed the **S.L.P. (C) no. 12463 of 2018** filed by the corporation against **Sanjay Singh** (supra). It is thus clear that 'the PMC' wants each and every individual to approach Patna High Court to get an order and do not have any respect for the orders passed by the Courts.

18. This Court can only request Mr. Prasoon Sinha, learned counsel appearing on behalf of 'the PMC' to personally apprise the Municipal Commissioner to look into the matter so that he takes cognizance and issue necessary guidelines in this regard to stop harassment of the buyers.

19. So far as the demand made vide letter no. 14515 dated 28.11.2023 issued by the Estate Officer of 'the PMC' (Annexure-P/9) is concerned, the same in the aforesaid facts and the circumstances and following **Sanjay Singh** (supra) judgment needs interference. It is accordingly quashed.

20. The petitioners will be approaching 'the PMC' in next four weeks along with the proper application and requisite fee for the mutation of the plot in question and 'the PMC' shall be duty-bound to complete the process in the next three months.



21. The writ petition stands allowed. No cost.

(Rajiv Roy, J)

Vijay Singh/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	27.08.2024
Transmission Date	

