

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8182 of 2001

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- 1 (a) Dr. Bijay Kumar Sharma, S/o Late Bishwambhar Kumar Sharma, R/o M.P. Sinha Road, P.O. + P.S. KADAMKUAN Town + District- Patna.
(b) Dr. Smt. Archana Kiran W/o Late Chandra Baleshwar Choudhary, R/o Village + P.O. Dimha, P.S. via Abiya Bazar, District- Bhagalpur
(c) Dr. Ranjana Mishra W/o Dr. Krishna Kumar Mishra, R/o Village Banni, P.O. Nagra, District- Saran, presently residing at Road No. 3 Juran Chapra, Town + District- Muzaffarpur.
(d) Dr. Smt. Rashmi Rekha, W/o Sri Vishwamohan Sharma, R/o Roop Bhawan, Pili Kothi, Village- Vilaspur, P.O. Hari Nagar, District- West Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Department of Revenue and Land Reform.
2. The Collector, Patna.
3. The Additional Collector Revenue, Patna Sadar, Patna.
4. The Circle Officer, Patna Sadar, Patna.
5. The Additional Secretary, Department of Revenue and Land Reforms, Old Secretariat, P.S. Secretariat Town + Dist- Patna.

... .. Respondent/s

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Appearance :

For the Petitioner : Mr. Neeraj Kumar, Advocate
For the Respondents : Mr. Vijay Kumar Singh, AC to SC-18

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA

CAV JUDGMENT

Date : 10-05-2022

Heard learned counsel for the petitioners and learned counsel for the respondents.

The writ petition under Article 226 of the Constitution of India has been filed for quashing the order dated 20.06.2001 (Annexure-4) passed by the Collector, Patna (respondent no. 2) whereby and whereunder the permanent lease deed of the petitioners have been cancelled and has resumed the land in question including the structures standing thereupon belonging to



the petitioners; further directed to the petitioners to handover the said land with structures to the Circle Officer, Sadar, Patna (respondent no. 4) by 02.07.2001.

Briefly stated the facts of the case as stated in the writ petition that 7 *katha*, 12 *dhurs* and 9 *dhurkies* piece of land was permanent leased out to Smt. Radha Rani Devi permanently from generation to generation with full rights of transfer and peaceful enjoyment without any interruption or disturbances by the lessor and was allowed to erect building in accordance with the plans and specification approved by the Municipality. The lessee after the grant of permanent lease from generation to generation constructed a house on the land in question for residential purpose. The said Smt. Radha Rani Devi along with her husband Sri Narendra Chandra Ganguli sold the lease hold land along with all the buildings and structures to Smt. Ratan Kumari Sharma (mother of the petitioners) by a registered sale deed dated 31.05.1944 taken in the name of Sri Shyam Sunder Thakur own brother of the husband of the Smt. Ratan Kumari Sharma, who subsequently by a registered deed of Ekrarnama Ladavi dated 26.04.1958 admitted the purchase made by and payment of consideration money by Smt. Ratan Kumari Sharma who came in possession of the said land and house and her name recorded in the Municipal Record.

In the year 1965, the mother of the petitioners demolished the old dilapidated structures and constructed a new



double storied house over the land in question in accordance with the map and plan sanctioned by the Patna Improvement Trust in Case No. 26671962. On 25.06.2001 the mother of the petitioners received a copy of order dated 20.06.2001 from the Collector, Patna asking her why the lease of the land in question should not be cancelled for violated the terms and conditions of the lease agreement and the Collector, Patna has directed the Circle Officer to take possession of the said land and structure standing thereon. Thereafter on 30.06.2001 the petitioner was served with a copy of memo no. 1320 dated 29.06.2001 issued by the Circle Officer, Sadar, Patna asking her to handover the land with structures by 02.07.2001.

The Collector having not found reply to the show cause satisfactory and recommended cancellation of the lease agreement.

Learned counsel appearing on behalf of the petitioner submits that the action of the respondent authority is wholly unsustainable in law on the ground that there is no specific provision for direct resumption under the lease agreement and resumption according to Rule 21 of the Khas Mahal Manual can be made only for public purposes and according to Rule 22 of the Khas Mahal Manual, the Collector can take steps or direct possession of the property in question only under the order of a competent civil court.



A counter affidavit has been filed on behalf of the respondents stating therein that as per Clause 6 of the Agreement the lessee will not use the said plot for any commercial gains except with the consent of the lessor. Clause 7 of the Agreement reveals if any breach or non-observance of any clause shall allow the lessor to annul the lease and take over the land in question after serving notice to the lessee.

In the year 1996 in course of physical inspection of the land in question, it was found that the lessee has violating the terms and conditions of the agreement. Accordingly the petitioner was given notice vide letter no. 641 dated 23.02.1996. The lessee gave their reply to the show cause notice stating therein that they had not violated any terms and conditions of the lease agreement.

The respondents recommended for the annulment of lease in question vide letter no. 694 dated 02.05.1997 to the Department of Revenue, Government of Bihar, Patna. The Department of Revenue, Government of Bihar, Patna vide letter no. 91 dated 12.04.2001 has approved the recommendation and lastly the department accepted the recommendation with a direction to resume the land in question.

Learned counsel appearing on behalf of the petitioners submits that lease in question being perpetual lease cannot be subject to any interference by the State. The lease in question has created a vested legal right in the lease holders to the exclusion of



others and the contractual obligation casted on the parties to the lessee would bind the parties untill the lease is determined by the competent forum (Civil Court).

Learned counsel for the petitioners in support of his submissions relied upon the following judgments :

(i) Shri Sanjay Singh Vs. Patna Municipal Corporation reported in 2021 (1) BLJ 5.

(ii) Uday Sinha and others Vs. The State of Bihar and others, reported in 2021 (5) BLJ 517.

(iii) Khas Mahal Citizen Welfare Society Vs. The State of Bihar and others, reported in 2016 (1) PLJR 277.

Learned counsel for the petitioners have also submitted that the aforesaid judgments rendered by a Coordinate Bench of this Court has also been upheld by a Division Bench in the case of **The State of Bihar and others Vs. Khas Mahal Citizen Welfare Society reported in 2017(3) PLJR 662.** Learned counsel for the petitioners further submits that the aforesaid judgment rendered by the Division Bench of this Court in the case of Khas Mahal Citizen Welfare Society (supra) has also been upheld by a judgment rendered by the Hon'ble Supreme Court of India in the case of **The State of Bihar and others Vs. Khas Mahal Citizen Welfare Society reported in 2019 (1) PLJR 628 (SC).**



Learned counsel for the petitioners submits merely by an administrative/executive order, lease deed in question can neither be cancelled nor possession of the land in question can be resumed unilaterally and the respondents are required to take recourse to the due process of law under the Rule 21 and 22 of the Khas Mahal Manual by invoking the jurisdiction of the competent civil court by filing appropriate suit and not otherwise. Learned counsel for the petitioners further submits that the Collector, Patna has cancelled the lease deeds in question and directed for resumption of the possession of the land in question, which is contrary to the law laid down by the Hon'ble Supreme Court of India in the case of **Express Newspapers Private Limited and others Vs. Union of India and others, reported in AIR 1986 SC 872** as also contrary to the law laid down by this Court in a judgment in the case of **The Gait Public Library and Institute Vs. The State of Bihar and others, reported in 1995 (1) PLJR 585.**

Learned counsel for the State is also not in a position to contest the stand in view of the judicial pronouncement noted above and fairly submits that the present writ petition is squarely covered by the judgments rendered by this Court in the case of **(i) Shri Sanjay Singh Vs. Patna Municipal Corporation reported in 2021 (1) BLJ 5, (ii) Uday Sinha and others Vs. The State of Bihar and others, reported in 2021 (5) BLJ 517,(iii) Khas Mahal Citizen Welfare Society Vs. The State of Bihar and others,**



reported in 2016 (1) PLJR 277 and the same has also upheld by the Hon'ble Supreme Court of India in the case of **The State of Bihar and others Vs. Khas Mahal Citizen Welfare Society reported in 2017(3) PLJR 662.**

For the reasons aforementioned, the order dated 20.06.2001 (Annexure-4) passed by the Collector, Patna cannot be upheld and is accordingly quashed.

The writ petition is allowed.

(Rajesh Kumar Verma, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	10.05.2022
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