

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17182 of 2013

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Raj Kumar Kedia S/o Late Baidyanath Kedia, resident of Mohalla- Henri Bazar,
P.S and Town- Motihari, District- East Champaran.

.... Petitioner/s

Versus

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1. The State of Bihar through the Secretary, Department of Urban Development, Bihar, Patna.
 2. The District Magistrate, East Champaran at Motihari.
 3. The Chairman, Motihari Municipality, now as Nagar Parishad Motihari, District- East Champaran.
 4. The Motihari Parishad through the Executive Officer, Motihari.
 5. The Circle Officer, Motihari, East Champaran.
 6. The Executive Officer, Motihari Nagar Parishad, Motihari, District- East Champaran.
 7. Binod kumar Son of late Badri Sah Resident of Naya Tola Banjariya Pandal, Motihari, East Champaran.
 8. Akshay Lall Kanjujia Son of Gauri Kanjujia R/o Village+PO. Siswa, P.S. Banjariya, District East Champaran.
 9. Binod Kumar Son of late Jiyut Prasad R/o Thakurbari , Motihari East Champaran.
 10. Raj kumar Gupta son of late Ragho Sah R/o Teliyapatti, Motihari, District East Champaran.
 11. Chandan Kumar Son of Lal Babu Sah R/o Teliyapatti, Motihari, District East Champaran.
 12. Sunil Kumar Son of Kanhaya Prasad R/o Teliyapatti, Motihari, District East Champaran.
 13. Prabhu Prasad Son of late Kasi Sah R/o Teliyapatti, Motihari, District East Champaran.
 14. Shambhu Prasad Son of late Sukhari Sah R/o Teliyapatti, Motihari, District East Champaran.
 15. Madan Prasad Son of Baidyanath Prasad R/o Henri Bazar Chowk, Motihari, District -East Champaran.
 16. Anil Kumar son of Ramchandra Sah R/o Teliyapatti, Motihari, District East Champaran.
 17. Chandan Kumar Son of Lal Babu Sah R/o Teliyapatti, Motihari, District East Champaran.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 15286 of 2013

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1. Ajay Kumar Laudia Son of Late Bhola Nath Laudia resident of Mohalla- Henry Bazar Motihari, P.S. And P.O.- Town Motihari, District- East Champaran
2. Anand Kumar Laudia Son of Late Bhola Nath Laudia Resident of Mohalla- Henry Bazar Motihari, P.S. and P.O.- Town Motihari, District- East Champaran

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary Govt. of Bihar, Patna

2. The Principal Secretary Department of Urban Development, Government of Bihar, Patna
3. The District Magistrate East Champaran
4. The Sub-Divisional Officer, Motihari Sadar, District- East Champaran
5. The Circle Officer Motihari Block, District- East Champaran
6. The Motihari Nagar Parishad through its Chief Executive Officer District- East Champaran
7. The Chief Executive Officer, Motihari Nagar Parishad District East Champaran
8. The Chairman, Motihari Nagar Parishad District- East Champaran

.... Respondent/s

Appearance:

(In CWJC No. 17182 of 2013)

For the Petitioner/s : Mr. Sanjay Singh, Advocate
Mr. AJAY KUMAR TIWARY, Advocate
For the Respondent-State : Mr. Kinkar Kumar, SC-27
For the Respondent-Municipality: Mr. Raghwanand, Advocate
For the Interveners : Mr. Y.V.Giri, Sr. Advocate with
Mr. Nirmal Kumar, Advocate

(In CWJC No. 15286 of 2013)

For the Petitioner/s : Mr. Amit Shrivastava, Advocate
Mr. MD. ANIS AKHTAR, Advocate
For the Respondent-State : Mr. Rakesh Kumar Ranjan, AC to GA-12
For the Respondent-Municipality: Mr. Raghwanand, Advocate

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 27-01-2016

In each of the two writ petitions the petitioners who claim settlement with the respondent Motihari Nagar Parishad (hereinafter referred to as the 'Municipality'), have questioned the resolution passed by the Special Empowered Committee on 17.6.2013 whereby and whereunder the settlement made in favour of the father of the respective petitioners has been terminated *inter alia* treating it to be an illegal settlement. The resolution of the Empowered Standing Committee was communicated to the respective petitioners vide notice dated 29.7.2013 of the Executive Officer of the 'Municipality' impugned at Annexure-2 and Annexure-13 to the respective writ



petitions followed by an order passed by the Executive Officer of the 'Municipality' bearing Memo No. 991 dated 10.8.2013 insofar as the petitioner in CWJC No. 17182 of 2013 is concerned and vide Memo No. 931 dated 10.8.2013 insofar as the petitioner in CWJC No. 15286 of 2013 is concerned which orders are impugned at Annexure-1 and Annexure-14 respectively to the two writ petitions.

Since the issues raised in the two writ petitions and the orders impugned passed by 'the Municipality' are on same terms hence the two writ petitions have been heard analogous and with the consent of the parties are being disposed of at the stage of admission itself by a common judgment.

Since the matter in contest is the same hence for the sake of convenience, I would be referring to the pleadings and Annexures as occurring in CWJC No. 17182 of 2013 unless clarified with specific reference to the other writ petition.

The dispute relates to settlement of land bearing Plot No. 1753 situated in Henry Bazar in the township of Motihari falling under the jurisdiction of the Motihari Municipality in the district of East Champaran. The pleadings on record manifests that the said plot is a large chunk which was reduced to smaller plots and was settled with no less than six persons (Annexure-9 to CWJC No.15286 of 2013). Insofar as the petitioner in CWJC No. 17182 of 2013 is concerned, a portion from the said plot admeasuring 84 feet from West to East, 74 ½ feet running West to East was put on auction sale for 99 years on



annual rent of eight annas per dhur by the Settlement Committee of the Motihari Municipality which auction took place on 24.2.1955. The settlement by way of auction sale for a period of 99 years was made by the Settlement Committee in favour of the father of the petitioner subject to its confirmation by the Board of the Municipality. An extract of the proceedings of the 'Municipality' dated 24.2.1955 is present at Annexure-3 and stands ratified by the Board as manifest from the resolution present at the bottom of the minutes of the proceedings bearing Resolution No. 10 passed in the ordinary meeting of the 'Municipality' held on 21.3.1955. The resolution passed by the Board of Municipality bears the signature of the President, Municipality which copy of the resolution is certified by the 'Municipality'. Pursuant to the settlement, that the father of the petitioner late Baidyanath Kedia made a deposit of Rs. 2,001/- on 26.2.1955 as stands confirmed from the receipt present at Annexure-4. Following the deposit that a holding was created in the name of the father of the petitioner bearing Holding No. 20(new) as stands confirmed by the receipt present at Annexure-5. It is thus not in dispute that following the settlement made by the Committee vide its resolution dated 24.2.1955 and upon completion of the formalities by the father of the petitioner in depositing the auction amount that he was put in possession of the land, a holding was created in his name and he all along has deposited the annual rent for the land and remains in possession. A residential house stands constructed on the land



where the family runs their business. The father of the petitioner, Baidyanath Kedia, passed away on 16.1.1997 and following which the present petitioner filed an application for mutation in his name and which was duly carried out by entering the name of the present petitioner in the records of the 'Municipality' and whereafter the Holding No. 20 running in the name of his father was converted to Holding No. 21/20. This fact stands confirmed from the receipt issued by the 'Municipality' on 16.6.2010 present at Annexure-6. The legal process for entering the name of the present petitioner in the municipal records having been completed, a notice was issued by the Executive Officer of the 'Municipality' bearing No. 1403 dated 25.11.2010 charging the petitioner of making illegal constructions. According to the Executive Officer the land was settled with the father of the petitioner late Baidyanath Kedia and since after his death the petitioner ought to have got the lease renewed which he had failed to do so. The petitioner thus was directed to stop the construction work. A copy of the notice is present at Annexure-7.

In between, an encroachment proceeding was also initiated against the land settlees and which was questioned by the petitioner in CWJC No. 9023 of 1996. The said writ petition was disposed of by a Bench of this Court with a direction to the District Magistrate to examine the matter in the backdrop of the documents relied upon by the petitioner and if it is ultimately found that the land is settled with the petitioner by the 'Municipality' for a period of 99 years then the



said settlement is not to be disturbed. A similar encroachment proceeding was also initiated against the petitioner in the other writ petition and who also approached this Court in CWJC No. 9170 of 1996 which was also disposed of on similar terms by this Court vide order passed on 18.9.1996. The orders passed by this Court in CWJC No. 9023 of 1996 has been enclosed by the intervenor-respondent in their counter affidavit and is present at Annexure-A and the order passed in the case of the petitioner in CWJC No. 15286 of 2013 is present at Annexure-4 of the said writ petition. The pleadings reflects that the matter was considered by the District Magistrate, East Champaran and the District Magistrate upon consideration of the matter in issue, the stand of the petitioners, the State and the stand of the 'Municipality' disposed of the proceedings on 18.2.1997 vide order enclosed at Annexure-B to the counter affidavit of the respondent in the present proceedings and Annexure-10 in the second writ petition and whereby the District Magistrate has recorded satisfaction that the settlees have a valid legal right and possession over the land in question and are genuine and bona fide lessee(s) of the land in question. The encroachment proceedings was dropped however, the land settlees were advised that in case they decide to remodel the existing house or make any reconstruction then it should be done only after taking prior permission of the 'Municipality'.

It would be relevant to mention here that the State as well as the Special Officer, Motihari Municipality entered appearance in the



proceedings and have also filed his written statement as manifest from Annexure-7 and Annexure-8 respectively to CWJC No. 15286 of 2013. In fact the Special Officer, Municipality in reference to the encroachment case in question has categorically mentioned that the settlement was made by the 'Municipality' in public interest and that the land is in possession of the petitioners who have made constructions upon creation of holding in their names. He has also mentioned that it is free from encroachment. These are relevant aspects of the matter in reference to the contest in question because the proceedings initiated against the petitioners treating them to be the encroachers on the land of the 'Municipality' was dropped under the orders of the Collector, East Champaran in exercise of powers vested under the Bihar Public Land Encroachment Act, 1956 and was not appealed against by the Municipality and has thus attained finality.

Reverting back to the chronological sequence of events, the notice of the Executive Officer dated 25.11.2010 impugned at Annexure-7 was questioned by the petitioner in CWJC No. 16893 of 2011 and this Court expressing surprise over the lack of understanding of the legal position on inheritance by the Executive Officer, disposed of the writ petition directing the Executive Officer to pass fresh orders upon consideration of the documents presented by the petitioner of being a valid settlee. It was clearly mentioned that a settlement did not end by the death of the original settlee rather the legal heirs automatically would step into the shoes of the original

settlee. It was also clarified that it is only in cases where settlement period had expired that the legal heir of the original settlee would be required to get an order of resettlement.

The matter on remand was reconsidered by the Executive Officer of 'the Municipality' in the light of the observations of this Court. The Executive Officer this time in consideration of the provisions of Section 17 and 49 of the Indian Registration Act, 1908 (hereinafter referred to as 'the Registration Act') held the settlement illegal in absence of any registration and rejected the application of the petitioner vide order bearing Memo No. 101 dated 17.1.2012, copy of the order is present at Annexure-9 to the writ petition. Surprisingly even when the papers relating to the settlement with the petitioner are not available in the 'Municipality' which is confirmed from the recitals of the order which also refers to an enquiry made by a five member committee constituted by the 'Municipality' to examine the claim of the petitioner and who reported that the petitioner is not in possession with any legal documents supporting settlement of 99 years. The order of the Executive Officer dated 17.1.2012 impugned at Annexure-9 was again questioned by the petitioner in CWJC No. 5898 of 2012 and a Bench of this Court taking note of the sequence of events through which the present contest has passed and in consideration of the stand of the Municipality for terminating the settlement for not being registered, recorded the following opinion:



“.....In my opinion, it would appear that in view of the settlement in question followed by deposit of the consideration/auction money and subsequent payment of yearly rent as also followed by creating the municipal holding in favour of the petitioner, petitioner’s right to continue over the land with the construction cannot be rejected. Admittedly, the settlement was acted upon between the parties and subsequently the petitioner by virtue of the said settlement continued to hold the settled land and constructed shops over it on payment of stipulated rent and holding tax being receipted by the Nagar Parishad. Now in the above facts and circumstances, appropriate steps for execution and registration of settlement could be taken even for the remaining period now through a proper deed in light of Annexure-1 & 2 of the writ petition.

In the result, it is directed that so long the settlement as contained in Annexure-1 is not terminated by a valid decision of the respondent-Nagar Parishad after following a due process of law the petitioner be not disturbed from the use and occupation of the land in question as per law.....”

It is in the light of the order passed by this Court in CWJC No. 5898 of 2012 that the Empowered Standing Committee of the ‘Municipality’ for the third time considered the claim of the petitioner and held the settlement illegal *inter alia* on grounds that:

- (a) The settlement is not by a registered document;
- (b) The proceedings required an approval of the Board of the Municipality’ which is absent;

- (c) The settlement required a prior approval of the State Government which is absent;
- (d) The settlement is in contravention of the provisions of sections 62 and 64 of the Bihar and Orissa Municipal Act, 1922 as the prescribed procedure has not been followed.



The decision of Empowered Standing Committee of the 'Municipality' was communicated to the petitioner(s) vide notice dated 29.7.2013 impugned at Annexure-2 and Annexure-13 to the respective writ petitions and which is followed by a formal order passed by the Executive Officer bearing Memo No. 991 dated 10.8.2013 insofar as the petitioner in CWJC No. 17182 of 2013 is concerned and order bearing Memo No. 931 dated 10.8.2013 insofar as the petitioner in the other writ petition is concerned and which orders are impugned at Annexure-1 and 14 respectively to the writ petition whereby the respective petitioners have been informed regarding the cancellation of the settlement by 'the Municipality' and being aggrieved both the writ petitioners are before this Court.

Since the case of the two writ petitioners have undergone identical situations hence I feel that a reference to the similar sequence of events arising in the case of the other writ petitioner would be only a repetition on facts. Demonstrably the facts are similar, the issues are common and the orders of settlement and its termination are identical in the two writ petitions except for the number of the orders under challenge, the descriptions of which I

have already given hereinabove.

Mr. Sanjay Singh has appeared for the petitioner in CWJC No. 17182 of 2013, while the other writ petitioner is represented by Mr. Amit Shrivastava, the State is represented by the respective State counsels, the Municipality in the two writ petitions is represented by Mr. Raghwanand and some interveners whose petitions for impleadment stand allowed by this Court vide order passed on 22.1.2016 are represented by Mr. Y.V. Giri, learned senior counsel assisted by Mr. Nirmal Kumar.

Mr. Singh, learned counsel leading the arguments has referred to some of the provisions of 'the Act' to justify the settlement. With reference to Section 3 of 'the Act' he refers to sub-section (29) to submit that the Commissioners are the persons appointed or elected to conduct the affairs of any Municipality. With reference to Section 24 he submits that the Chairman of the Municipality is vested with all powers to pass any order in connection with transaction of business as vested in the Commissioners subject to the exception that he shall not act in opposition or in contravention of any resolution of the Commissioners. Mr. Singh refers to Section 58 of 'the Act' which deals with the municipal property and with particular reference to Clause-(f) he submits that it includes land, building transferred to the Commissioners. Mr. Singh next referred to the provisions of Section 62 relied upon by the Municipality to cancel the settlement and submits that the provisions empowers the Commissioner to take a



decision at a meeting to purchase, sale, lease, exchange any land or otherwise dispose any land not required for such purpose or which has been acquired by them for the purpose of lease. He submits that whereas Section 62 of 'the Act' is an enabling power vested in the Commissioner to purchase, sale, lease or exchange any land, such decision taken at a meeting is to be reduced into a contract to be executed under Section 64 of 'the Act' which vests power in the Commissioner to enter into and perform any contract and Sub-section (2) of Section 64 provides that any contract exceeding five hundred rupees is to be sanctioned by the Commissioner at a meeting to be signed by at least by two Commissioners of which one is to be the Chairman or Vice-Chairman.

In the backdrop of the statutory provisions that Mr. Singh turned to the settlement order present at Annexure-3 to submit that it is duly signed by Four Commissioners whose names finds mention therein and who are the members of the Settlement Committee. He submits that it is not the Settlement Committee alone who has taken a decision rather the decision of the Settlement Committee has been ratified by the Board in its ordinary meeting held on 21.3.1955 as confirmed from the extract present in the minutes which is duly signed by the President of the 'Municipality'. Mr. Singh charging the 'Municipality' with causing undue harassment to the petitioners even on the face of a valid settlement has submitted that initially they chose to disturb the possession by drawing an



encroachment proceeding which was ultimately dropped on their own acceptance of a valid settlement. He submits that having failed in this endeavour, the possession of the petitioners was sought to be disturbed upon the death of the original settlee i.e. the father of the petitioner and which was not accepted by this Court vide order passed in CWJC No. 16893 of 2011 requiring the Executive Officer to examine the matter. In a second round disturbance, the Executive Officer rejected the claim of the petitioner on grounds that the documents of the settlement were not registered and which again was interfered with by this Court in CWJC No. 5898 of 2013 and not appealed against. It is argued that having failed in earlier pursuits now the respondent-Municipality has taken recourse to the provisions of Section 62 and 64 of 'the Act' to question the settlement on grounds of procedural infraction which is apparently not sustainable for neither Section 64 of 'the Act' requires a registration of any document of settlement nor a non-registration thereof after a lapse of almost 60 years would vest right in the Municipality to interfere with the right of possession of the petitioner over the land in question. In support of his submission Mr. Singh has relied upon a Supreme Court judgment reported in **(2000) 6 SCC 394 (Anthony vs. K.C. Ittoop & Sons)** and with particular reference to paragraph-8, 9 and 10 he submits that examining similar issue arising from an unregistered lease, the Apex Court in consideration of the provisions of Section 107 of the Transfer of Property Act, 1882 (hereinafter referred to as



‘the T.P. Act’) and Section 17 read with Section 49 of ‘the Registration Act’ has explained that a lease for immovable property may be either made through registered instrument or by oral agreement followed by delivery of possession and which would govern the conduct of the parties to the transaction. He submits that the Court has taken note of the circumstances where the parties enter into an agreement for the premises, possession is given and exchange monthly rent and which possession is attributed to a jural relationship between the parties and is held no different as in between a lessor and a lessee. He submits that the Court has held that in such circumstances taking a different view would be contrary to the reality particularly where parties clearly intended to create a lease though a document executed had not gone through the process of registration. Stressing upon the finding recorded by the Apex Court in paragraph-12 to 16 of the judgment he submits that in the legal position explained, the orders impugned are unsustainable and cannot be upheld.

Mr. Shrivastava appearing for the petitioner in the second writ petition has reiterated the identical sequence of events undergone by the second petitioner beginning from the resolution of settlement made in favour of the father of the petitioner and leading to the impugned orders. He has referred to the order passed by this Court in the case of this petitioner on the encroachment proceeding initiated against him bearing CWJC No. 9170 of 1996 present at Annexure-4 and pursuant where to a representation was filed by the petitioner



before the Collector, East Champaran arraigning the Municipality as a respondent giving rise to Misc. Case No. 20 of 1996. With reference to the written statement filed by the State in the proceedings before the Collector, East Champaran present at Annexure-7 and the opinion given by the Special Officer, Municipality in the proceedings as communicated to the Deputy Collector present at Annexure-8, he submits that no issues were raised either by the State or the Municipality as regarding the validity of the settlement rather each of the authority supported the settlement and it is in consideration of the stand so taken that the Collector dropped the encroachment proceedings while upholding the settlement vide order present at Annexure-10 in CWJC No. 15286 of 2013. Reiterating the argument advanced by Mr. Singh, he submits that the notice dated 29.7.2013 impugned at Annexure-13 followed by the order impugned at Annexure-14 of the Interlocutory Application bearing I.A. No. 5902 of 2013, are unsustainable and fit to be quashed.

Contesting the arguments of the learned counsel for the petitioner Mr. Raghwanand has simply relied upon the stand taken by the 'Municipality' in the impugned orders to cancel the settlement *inter alia* on grounds that it is not by a registered document and thus neither in tune with the statutory provisions underlying Section 107 of 'the T.P. Act' read with Section 17 and Section 49 of 'the Registration Act' nor has the settlement been granted in conformity with the procedure prescribed under Section 62 and 64 of 'the Act'.



Questioning the settlement on the identity of the members of the Settlement Committee whose names find mention in the settlement order present at Annexure-3 to CWJC No. 17182 of 2013 and Annexure-1 to the second writ petition, he submits that it is not clear that whether these persons in fact were Commissioners with the Municipality. Mr. Raghwanand also chose to question the certification by the President *inter alia* on grounds that 'the Municipality' has a Chairman and not a President.

Mr. Giri, learned senior counsel appears for the private respondents who seek a right to oppose the writ petition by virtue of an order bearing Memo No. 663 dated 31.3.2012 enclosed at Annexure-A to I.A. No. 1691 of 2014 filed in CWJC No. 17182 of 2013 whereby these private respondents were directed to deposit a sum of Rs. 17,000/- for allotment of shops following the cancellation of settlement of the writ petitioners. It is a claim of these respondents that they have deposited the amount with the Municipality on such offer being made and thus have a valid right to contest the claim.

Since the Division Bench of this Court vide order present at Annexure-G to the counter affidavit filed by these intervener-respondents has already granted liberty to them for seeking impleadment in the present proceedings hence as already stated above their prayer for impleadment has been allowed by this Court and they have been heard in opposition of the writ petition.

Mr. Giri has questioned the very right of the petitioners to



maintain the writ petition since according to him it does not rest upon a valid document. According to Mr. Giri a legal right can only be claimed through a valid document but in the present case the writ petitioners cannot draw any right from the order of settlement present at Annexure-3 of the writ petition or Annexure-1 to the second writ petition because it is not a valid document and in absence of a mandatory registration, no right can flow to the petitioners therefrom. With reference to the provisions of Section 58 of 'the Act' he submits that the property of the Municipality vests in the collective body of the Ward Commissioner and a few members opting therefrom cannot make any order of settlement. With reference to sub-section (29) and (17) of Section 3 he submits that the Settlement Committee is not the same as Commissioners and thus were not entitled to pass any such order. It is the argument of Mr. Giri that the settlement being illegal, no legal right can be claimed by the petitioners nor this Court would exercise its discretionary jurisdiction to support such right in absence of its lawful support. He submits that the proceedings present at Annexure-3 is not a proceeding of the Commissioners and since Section 62 of 'the Act' empowers the Commissioners alone to take a decision with regard to a purchase, sale, lease or exchange of any land belonging to the Municipality, such right could not have been usurped by the Settlement Committee. According to Mr. Giri the proceedings of the Settlement Committee present at Annexure-3 not being in tune with Section-62, it is invalid. It is also the argument of Mr. Giri that



Section 62 and Section 64 are not supplemental to each other rather are independent provisions catering to different situations. He submits that whereas Section 62 empowers the Commissioners of the Municipality to enter into any transaction of transfer of property of the Municipality and which transfer is to be in tune with the provisions of 'the T.P. Act' on the other hand, Section 64 merely enables the Commissioner to enter into any contract necessary for the purpose of 'the Act'. According to Mr. Giri the jurisdiction vested in the Commissioner under Section 64 is in context with work contracts or short term contracts but certainly would not include long term settlement or a contract relating to transfer of property as conceived under Section 62 of 'the Act' which has to be in conformity with the provisions of 'the T.P. Act' and 'the Registration Act'.

Contesting the judgment relied upon by Mr. Sanjay Singh, it is argued by Mr. Giri that the judgment is in context with a landlord-tenant relationship and is certainly not applicable to the facts available in the present case.

I have heard learned counsel for the parties and I have perused the records. There are certain undisputed facts as confirmed from the pleadings and which needs to be put on record, viz;

- (a) There is an order of settlement passed by the Settlement Committee of Motihari Municipality dated 24.2.1955 present at Annexure-3 to the first writ petition and Annexure-1 to the second writ petition;
- (b) The order of settlement on record is a certified copy

issued by the Motihari Municipality and thus the genuineness is not in doubt;

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- (c) The order of settlement was given effect to in each of the two cases by the Municipality for it was followed by deposit of the auction amount by the settlees i.e. the father of the respective petitioners which was accepted, receipt issued and which led to creation of Holding bearing No. 20 insofar as the father of first writ petitioner is concerned and Holding No. 13 insofar as the father of the second writ petitioner is concerned.
 - (d) The plot in question is Plot No. 1753 and which has been settled in favour of the six persons who are in possession of the respective allotments as is manifest from the report of the Anchal Amin present at Annexure-9 to the second writ petition which also accompanies a map of holdings. The name of the father of the two writ petitioners appears at serial nos. 1 and 2.
 - (e) It is following the settlement, the deposit of the auction amount, the creation of holding that possession was handed over to the father of the petitioners and has continued since the order of settlement.
 - (f) It is after a lapse of more than 40 years of the settlement that an encroachment proceeding was initiated against the petitioners in the year 1996 prompting the petitioners to move this Court in CWJC No. 9023 of 1996 and CWJC No. 9170 of 1996 and which were disposed of with a direction to the respective petitioners to file a representation before the Collector, East Champaran who was directed to consider and dispose of the matter and in

case the claim of the petitioner regarding settlement over the land for 99 years is confirmed then it should not be disturbed. The order of the Court is present at Annexure-A of the counter affidavit of the intervener-respondents filed in CWJC No. 17182 of 2013 and Annexure-4 to the second writ petition.

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- (g) The District Magistrate in consideration of the stand of the State and Municipality present at Annexures-8 and 9 to the second writ petition vide order present at Annexure-B to the counter affidavit of the intervener-respondents in CWJC No. 17182 of 2013 and Annexure-10 to the second writ petition, dropped the encroachment proceedings upholding the settlement of the petitioners as valid. This order was not appealed against and has attained finality.
- (h) Turning blind eye to the order passed by the Collector, East Champaran upholding the settlement of the petitioners the possession of the petitioners over the land was sought to be disturbed upon the death of the father and non-renewal of the settlement which objection was rejected by this Court vide order passed in CWJC No. 16983 of 2011 present at Annexure-8 with direction to the Executive Officer to examine the settlement issue while upholding the claim of the present petitioners as the successor in interest to the original settlee.
- (i) The claim of valid settlement was again rejected by the Municipality *inter alia* on grounds that the document is not registered and was questioned in CWJC No. 5898 of 2012. This Court while upholding the right of the petitioners to continue over the land and even while giving liberty to the Municipality to take steps

for execution and registration of the settlement for the remaining period in the light of Annexure-1 and 2 of the writ petition, held that until such time that the settlement is not terminated after following the due process of law under a valid decision of the respondent Nagar Parishad, the possession of the petitioner would not be disturbed.

- (j) The orders impugned have been passed thereafter.

The notice dated 29.7.2013 impugned at Annexure-2 to the first writ petition and Annexure-13 to the second writ petition discusses the foundation for the resolution passed by the Empowered Standing Committee of the Municipality on 17.6.2013 to cancel the settlement and which are:

- (i) It is not registered;
- (ii) It does not bear approval of the Board or the State Government; and
- (iii) It has been passed without ensuring compliance with the prescribed procedures of Section 62 and 64 of 'the Act'.

Of the three grounds so raised for the resolution passed by the Empowered Standing Committee whereas there is no dispute that the settlement is not by way of registered document, the other two grounds relatable to seeking approval of the Board as well as the State Government and violation of the prescribed procedure of Section 62 and 64 of 'the Act', in my opinion, are completely misplaced and contrary to the evidence on record.



Section 58 of 'the Act' vests the property of the Municipality in the Commissioners and Section 62 enables the Commissioners at a meeting to take a decision with regard to transfer of such property by way of purchase, sale, lease or exchange or otherwise. Section 64 again vests power in the Commissioner to enter into any contract and any contract exceeding Rs. 500/- is to be sanctioned by the Commissioners at a meeting to be signed by at least two Commissioners, one of whom has to be the Chairman or the Vice Chairman and shall bear the common seal.

Apart from the provisions relied upon by learned counsel(s) another important provision of 'the Act' is Section 49 which empowers the Commissioners to appoint Committees and delegate powers to Committee to carry out the purpose of 'the Act' and Section 50 deals with constitution of the Committees. On a conjoint reading of the provisions of Section 3(29), Section 24, Section 58, Section 62 and Section 64 along with the provisions of Section 49 and 50 it would be manifest that even when the power under 'the Act' to deal with the property of the 'Municipality' vests in the Commissioners, the legislature has also armed the Commissioners to constitute Committees to carry out the purposes of 'the Act' as found in Section 49 and 50. In such circumstances, no fault can be found in the proceedings of the Settlement Committee who decided to enter into long term settlement of the Municipal property in question by way of auction sale. In addition thereto, the very ratification of the



proceedings of the Settlement Committee by the Board of the Municipality as manifest from the extract reproduced in the minutes of the meeting present at Annexure-3, bearing the signature of the President duly appointed by the Commissioners under Section 28 of 'the Act', no illegality can be found in the order of settlement either on grounds of seeking approval by the Board or on grounds of the prescribed procedure not being followed. In fact the enactment does not even mandate a prior approval of the State Government which condition is foreign to the prescriptions.

Although counsel for the Municipality also chose to question the validity of the document of settlement on grounds of lack of identity of Commissioners and that there is no post of President but neither of the objection is sustainable for whereas the election of President is made by the Commissioners under Section 28 of 'the Act' and insofar as the identity of the Commissioners is concerned, considering that the resolution on record is a certified copy thereof issued by the Municipality themselves, they cannot raise issues on veracity of the documents. In fact the Municipality being a party to the proceedings before the District Magistrate in the encroachment proceedings and having upheld the settlement made in favour of the father of these petitioners which led to the dropping of the proceedings, they neither can take a contrary stand nor can they raise objection on the validity and genuineness of the document of settlement.



In the circumstances discussed, the only issue which falls for consideration is whether the non-registration of the order of settlement passed in the case of two petitioners can empower the 'Municipality' to cancel the same. In my opinion, the answer has to be in negative and the reasons are many. The order of settlement was acted upon by the 'Municipality' in accepting the auction bid amount from the father of the respective petitioners and in creation of holding as well as handing over the possession of the allotted portion of Plot No. 1753 to the respective petitioners as well as others as manifest from the report of the Circle Officer present at Annexure-9 to CWJC No. 15286 of 2013 which also accompanies a sketch map giving details of the possession. The possession of the respective petitioners remained undisturbed for more than 40 years and even the encroachment proceedings initiated against them was dropped in 1997 upholding the settlement as valid. The father of the petitioner expired and his name was entered in the Municipal Records on 16.6.2010. The attempt to disturb the possession of these petitioners has all through been restricted under the orders of this Court and even when the order passed in CWJC No. 5898 of 2013 granted liberty to the Municipality either to take steps for execution and registration of settlement for the remainder period in the light of the order of the settlement and not to disturb the petitioners from the possession of the land in question so long as the settlement is not terminated by the Municipality after following a due process of law,

the Empowered Standing Committee of the Municipality has taken a short route to hold the settlement invalid. The limited issue which comes up for consideration is thus:

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- (a) Whether the Municipality having taken a valid decision in favour of the father of the petitioners for settlement of the portion of land in question and allowed such decision to continue for more than 50 years, can turn around to cancel the settlement merely on grounds that the settlement is not registered even in absence of any violation of the terms of settlement by these petitioners; and
 - (b) Whether even if the settlement is not by a registered document yet the accompanying circumstances does explain the nature of transaction as well as the conduct of the parties to enter into such a relationship of a long term settlement and its conformity by transfer of possession which has continued for more than 50 years since the first of the disturbances took.

In the entire gamut of argument though learned counsel for the Municipality and the private respondents have referred to the mandate of Section 17 of 'the Registration Act' and the consequences flowing from non-registration of a document as found in Section 49 thereof but either of the two counsel have failed to take notice of the proviso attached to Section 49 which runs as follows:

“Provided that an unregistered document effecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in

a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (1 of 1877) or as evidence of any collateral transaction not required to be effected by registered instrument.”

Meaning thereby even if the order of settlement in question which is unregistered, may not be permitted or be allowed to be led as evidence to establish a right claimed thereunder but nonetheless it definitely is an evidence of the transaction entered in between the parties i.e. the father of the respective petitioners on the one part and the Municipality on the other and explains the nature and character of possession of the settlee since 1955.

In this regard, I would fruitfully refer to the observations made by a Division Bench of this Court as regarding the effect of the proviso to Section 49 on an unregistered document in a case reported in **AIR 1957 Patna 157 (Shribhagwan Singh vs. Rambasi Kuer)** which in paragraph 14 observes thus:

“14. The position is well established that a transferee having acquired title under an invalid transaction, and continuing in possession for more than twelve years, would be deemed to have acquired a perfectly good title to the property. In the present case, although the oral sale by defendant no. 14 to the plaintiffs in 1927 for Rs. 300/- was an invalid sale, as it was not under a registered document and, therefore, it did not amount to a legal sale of the land to the plaintiffs, it could nevertheless be referred to as explaining the nature and character of the possession of the plaintiffs thenceforth from 1927 right up to till at least the 26th June, 1947, when an adverse

order was passed against the plaintiffs in the proceeding under section 145, Criminal Procedure Code.

The above view is supported by the decision of the Privy Council in the case of N. Varada Pillai v. Jeevarathnammal, 46 Ind App 285 : (AIR 1919 PC 44) (C). In my opinion, therefore, the plaintiffs' possession from 1927 for upwards of twelve years amounted in law to their adverse possession against the defendants. The two courts of appeal below found that the plaintiffs were put in possession in 1927, by defendant no. 14 with the knowledge and consent of defendants 1 to 3, who represented their family consisting of themselves and defendants 4 to 13."

(Emphasis supplied by me)

Similar is a view expressed by a Bench of this Court in a case reported in **AIR 1974 Patna 195 (Rameshwar Lal vs. Sardar Amrik)** when this Court examining the scope and intent of provision to Section 49 on an unregistered lease has, in paragraph-12, observed thus:

"12. The only other grievance is that the Court below has again relied on Exhibit 14(a). After the remand it was contended before the lower appellate Court that although the document of lease could not be taken into consideration for the proof of the creation of the tenancy, it could certainly be looked into for a limited and collateral purpose, namely, to explain the nature of possession. The argument of the learned Counsel is that because of its being an unregistered one it cannot be looked into at all for any purpose whatsoever. He has gone to the extent of arguing that it is only the factum of



execution of such a document which can be taken into consideration and not the contents of the document, whether for collateral purpose or otherwise. It is impermissible to accept such an argument. The proviso to Section 49 of the Indian Registration Act itself lays down that an unregistered document may be received as evidence of any collateral transaction not required to be effected by registered instrument. The Court of appeal below has been careful in saying that the document cannot be looked into except for the purpose of ascertaining the nature and character of possession.....”

(Emphasis supplied by me)

Identical is the view expressed by the Supreme Court in the case relied upon by Mr. Sanjay Singh. The Supreme court even while taking note of the mandate of Section 107 of ‘the T.P. Act’ as well as Section 17 and 49 of the Indian Registration Act, has while observing that these were only the different modes of creation of leases, upheld the right as well as the choice of the parties to create a lease either by registered instrument or by oral agreement accompanied by delivery of possession. Paragraph-13 and 14 of the judgment would be relevant for the purpose and reads thus:

- “13. When lease is a transfer of a right to enjoy the property and such transfer can be made expressly or by implication, the mere fact that an unregistered instrument came into existence would not stand in the way of the court to determine whether there was in fact a lease otherwise than through such deed.
14. When it is admitted by both sides that the appellant was inducted into the possession of the building by



the owner thereof and that the appellant was paying monthly rent or had agreed to pay rent in respect of the building, the legal character of the appellant's possession has to be attributed to a jural relationship between the parties. Such a jural relationship on the fact-situation of this case, cannot be placed anything different from that of lessor and lessee falling within the purview of the second para of Section 107 of the TP Act extracted above. From the pleadings of the parties there is no possibility for holding that the nature of possession of the appellant in respect of the building is anything other than as a lessee."

Considering the issue at hand in the backdrop of the law so well settled, it would be an absurdity to accept anything but, that the Municipality has consciously entered into a settlement with the father of the petitioners and the nature and character of the transaction so entered in between the parties is confirmed from the continuation of the possession of these petitioners over the respective plots settled with them for now 60 years coupled with the creation of holdings and acceptance of rent by the Municipality. In the circumstances where the Municipality being a party to the settlement did not choose to create a register instrument for the purpose, it does not lie in their mouth to question the settlement on the anvil of its non-registration more particularly where the agreement has been given effect to and has continued now for more than 60 years. Clearly the attempt of the Municipality to create repeated obstructions in the way of the writ



petitioners to enjoy the fruit of the settlement, each time raising different objections is a clear case of arbitrary and abusive exercise of statutory power by the Municipality. Even when this Court in its order passed in CWJC No. 5898 of 2012 clearly restrained the Municipality from disturbing the possession of the petitioners until such time that the settlement is terminated by following a due process of law, the Municipality has simply proceeded to cancel the settlement unilaterally on grounds which in the backdrop of the passage of time are unsustainable. That the petitioners have, since after the settlement made on 24.2.1955, continued to be in valid possession of the respective plots and have been discharging their obligation to deposit the annul rental, hence as already directed by this Court in the order passed in CWJC No. 5898 of 2012, any termination of settlement prior to the expiry of the settlement period can only be by following a due process of law and neither by an executive fiat nor by a unilateral decision of the Empowered Standing Committee of the Municipality.

For the reasons aforementioned, the orders of cancellation of settlement impugned at Annexure-1 and 2 of CWJC No. 17182 of 2013 and Annexure-13 and 14 to CWJC No. 15286 of 2013 are held illegal and are accordingly set aside.

The writ petitions are allowed. Insofar as the deposit made by the intervener-respondents, is concerned, it goes without saying that the same shall be refunded by the Municipality in accordance with

law.

That these petitioners have been subjected to repeated onslaught by the respondent-Municipality, I am more than satisfied that this is an appropriate case for imposition of heavy cost on the Municipality but with much reluctance have restrained myself.

(Jyoti Saran, J)

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