

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5740 of 2013

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1. Krishna Prakash Singh Keshari Son Of Late Jagtanand Singh Resident Of 'Jagat Kunj' Boring Canal Road, Patna- 1
2. Narendra Kumar Singh Son Of Late Jagtanand Singh Resident Of 'Jagat Kunj' Boring Canal Road, Patna- 1

.... Petitioner/s

Versus

1. The State Of Bihar, Through Principal Secretary, Land Reforms Department, Government Of Bihar, Patna
2. The Commissioner, Patna Division, Patna
3. The District Magistrate-Cum-Collector, Patna
4. The Additional Collector, Patna
5. The Sub-Divisional Officer, Patna
6. The Deputy Collector, Land Reforms, Patna
7. The Circle Officer, Patna Circle, At And P.O. And P.S.:- Patna, District:- Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mahesh Narayan Parbat, Sr. Advocate
Mr. Sanjay Kumar Jha
For the Respondent/s : Mr. Sunil Kumar, A.C. to A.A.G.-VI

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 14-03-2016

Heard Mr. Mahesh Narayan Parbat for the petitioner and

A.C. to A.A.G.-VI for the State.

The petitioners claim the Khas Mahal land under the original lessee who was leased out the property on temporary basis on 5.10.1937. The writ application was filed for a direction upon the respondents to renew the lease. It is stated that during the pendency of this application, by notice dated 11.5.2013 (as contained in Annexure-A to the supplementary counter affidavit), it was revealed that the lease itself was cancelled on 04.02.2006 as the petitioner was found

violating the terms of the lease. The prayer now is to quash the said order dated 04.02.2006 (Annexure-14 to the third supplementary affidavit).

The writ petition asserts that in September, 1937, the subject land was leased out to the original lessee. It was for a period of 50 years only which expired in September, 1987. An application for renewal was filed which was not accepted or allowed. However, for few years even after the expiry of the lease, rent of the land was realized by the respondents. In 1998, the respondents refused to accept the rent of the subject land. On 17.2.2006, the respondents issued a notice for submission of his consent for renewal of the lease on payment of *salami* at market rate. Annexure-12 is the communication dated 11.5.2013 by which the respondents again issued notice to the petitioners to give consent for renewal of the lease on the conditions contemplated in 2011 Khas Mahal Manual Policy. Mr. Parbat states that a writ petition was filed by the Khas Mahal Citizens Welfare Society challenging the legality of the 2011 Khas Mahal Policy. A bench of this Court by order dated 8.10.2015 disposed of the writ petition and directed that in case the lease exists, the condition(s) contained in 2011 Khas Mahal Policy shall not be applicable. It is also the contention of the petitioners that before cancellation of the lease, no notice was served and opportunity was

given. The respondents, therefore, erred in directing the petitioners to pay the *salami* etc. as per the 2011 Khas Mahal policy. According to the petitioners, they shall be governed by the circular dated 1.9.1969 (Annexure-11) issued by the Government in the Department of Revenue. Clause 4 of the aforesaid Circular states as under:-

“4. Government in the light of the advice of the Law Department desire the following action to be taken for the disposal of these cases-

(i) Lessees of category 2(a) having the protection of Section 116 of the Transfer of Property Act are not defaulters and they may be noticed at once to get their lease renewed on payment of double the annual rental as provided in the Revenue Department letter No. 9294-R, dated the 27th October, 1961 reported at page 29 of the Compendium on Settlement of lands.

(ii) For lessees of category 2(b) Government have decided to take action as following-

(a) Lessees continuing on the lease-hold property without payment of rent and renewal are to be treated as trespassers and have no case for renewal on past terms and conditions. They should be noticed to notify their intention by a fixed date if they are desirous of taking fresh lease on payment of *Salami* at the current market value of the land as contemplated in Revenue Department letter no. 6053/R, dated the 19th august, 1963 reproduced at pages 23-24 of the Compendium on settlement of lands with the only modification that in respect of commercial leases, no tender is to be invited and the market value of the land together with capitalized value of rent (25 times of its annual rental) only is to be charged as *salami* and settlement may be made with the existing lessees and in case of leases granted for residential purposes, the instruction contained in the aforesaid letter may be followed-

“In these cases 1/50th of *Salami* will be the annual rental of fresh leases in respect of residential lease and 1/20th in respect of Commercial leases.

The lessees are also liable to pay arrear of double rental from the date of non-payment of the annual rental at the rate prescribed in the original lease with 6 ¼ % interest thereon.

The lessees may be charged an amount depending upon the discretion of the Collector, but subject to the Maximum fixed in a lease as liquidated damages, because they have violated the terms of the lease.”

(b) In case of leases where the very purpose of the lease has been changed in violation of the terms of the lease and lessees are continuing on the lease hold property without payment of rent, and renewal they are also to be treated as trespassers, and they too are to be noticed to notify their intention by a fixed date, if they are desirous of taking fresh lease, on the terms and conditions specified for the lessees of para 4(ii) (a) above. In such cases however, it should be kept in mind that if a lessee has continued payment of rent for the purpose defined in the lease, in realization of arrear from him only the difference between the amount already paid and the amount which should have been, paid from the date the purpose was changed, is to be realized with 6 ¼ % interest thereon.

(c) Cases where the original lessees have transferred their interest to a transferee either before, or after the expiry of the lease period, and the transferee is continuing on the lease hold property without payment of rent and renewal, he too is a trespasser and is entitled to no consideration under the past lease. He is also to be noticed to notify his intention to take fresh lease by a fixed date, on the terms and conditions specified for lessees of category 4 (ii) (a) together with other liabilities if any incurred by the original lessees because the transferees have taken the lease from original lessees in violation of the terms of the lease with all encumbrances thereon.”

The stand of the State in the counter affidavit is that when a representation was filed for renewal of the lease, the



respondents, in course of consideration thereof, found that there was breach of the terms of the lease as the subject land was used for commercial purposes. Notice was issued to the petitioners and when no response was received, the lease itself was cancelled on 04.02.2006. The case of the petitioner shall not be governed by the order dated 08.10.2015 passed by a Bench of this Court in C.W.J.C. No. 19325 of 2013.

Even if the case of the petitioners is to be governed/considered in terms of Clause 4 of the Circular dated 1.9.1969 (Annexure-11), the petitioners, in the facts of the case, can be treated as trespasser as indisputably no lease exists in favour of the petitioners which stood either cancelled or withdrawn in 2006. Clause 4 deals with the procedure of cases where there does not exist any lease in favour of the claimant/petitioners. In the facts of the case, the Court finds it difficult to pass any positive order in favour of the petitioner and grant the relief by quashing the order of cancellation of the lease.

Mr. Parbat states that even in that case, the petitioners having applied for renewal of lease and also for change in the land use, they may be entitled to approach the respondents to consider the claim of the petitioners in accordance with law.

I do not see any difficulty in granting the said liberty to

the petitioners. It will be open to the petitioners to place relevant facts/documents to convince the competent authority of the respondent in the consideration of the matter that the process provided for such cancellation of lease was not followed and that the petitioners having applied for renewal of lease and subsequently for change in the land use may be entitled to get lease freshly executed in their favour according to the provisions applicable in the case of the petitioners.

The writ application as also the pending interlocutory application(s) stand disposed of permitting the petitioners to file such representation before the concerned respondent for consideration and passing appropriate orders in accordance with law.

(Kishore Kumar Mandal, J)

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