

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12335 of 2013

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Shri Ram Kumar Singh, son of Late Bijayanand Singh, resident of Bailley Road,
Opposite Tara mandal, P.S.- Koltwli, P.O.- G.P.O., District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Land Reforms Department,
Government of Bihar, Patna.
2. Principal Secretary, Land Reforms Department, Govt. of Bihar, Patna.
3. The Commissioner-cum-Secretary, Department of Revenue and Land Reforms,
Patna.
4. The District Magistrate-cum-Collector, Patna.
5. The Additional Collector, Patna.
6. The Sub-Divisional Officer, Patna.
7. The Deputy Collector, Land Reforms, Patna.
8. The Circle Officer, Patna Circle, At & P.O.- & P.S.- Patna, District- Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Chitranjan Sinha, Sr. Advocate
Mr. Jitendra Kishore Verma

For the Respondent/s : Mr. Anil Kumar Singh, G.P.-26

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 08-09-2016

Heard Mr. Chitranjan Sinha, Sr. Advocate, for the
petitioner and A.C. to G.P.-26 for the State.

The writ application questions the legality of the order
dated 11.03.2013 (Annexure-11) passed by the respondent Collector
as also the order dated 17.02.2006 (Annexure-9) passed by the
respondent Divisional Commissioner.

Under a lease executed in 1937 by the Collector, the
grandfather of the petitioner namely Late Bishundeo Narayan Singh
was settled 16 kathas of khas Mahal land for a period of 50 years.
The lease expired in 1987. It is stated that the original lessee, while



the lease survived, made certain gifts with the permission of the Collector in favour of one of his sons namely Vivekanand Singh. Again the original lessee gifted 03 kathas 17 dhurs and 14 dhurkies of the leased Khas Mahal land to his grandsons from the share of his son Jagatanand Singh. The original lessee died on 03.02.1983. The further case of the petitioner is that there was amicable partition of the land settled under the lease with the original lessee amongst the descendants in which the petitioner got some share of which the petitioner is in occupation. Certain portion thereof has only been commercially used by him. However, the entire land share in his possession has not been commercially used by him. A writ petition being C.W.J.C. No. 9291 of 1998 (Vijay Kumar Singh vs. The State of Bihar and Ors.) was filed for directing the State respondents to take stern action against the lessees of Khas Mahal land situated at Bailey Road as the land was recklessly being used by the lessee(s) or their descendants for commercial purposes without obtaining approval from the concerned authority including the then Patna Regional Development Authority. The petitioner intervened in the said writ petition. Upon hearing both sides, the writ petition was disposed of by a proceeding dated 21.09.1999 wherein the Court observed as under:-

“On taking note of these facts and circumstances this writ petition is disposed of with the observation that it will be open to the Authority to proceed in that matter and to take a final decision in connection with the constructions in question, in accordance with law,



and after giving due opportunity of hearing to all concerned. Similarly, it will be open to the State Govt, to take a final decision in the matter of renewal of the lease in favour of the descendants of the original lessee. Needless to say that the decision will be taken on a consideration of all the material facts and circumstances and after allowing an opportunity of hearing to the descendants of the original lessee. It is expected that a final decision on the question of renewal of lease will be taken expeditiously and without any undue delay.”

Whether the descendants of the original settlee approached the authority within time for renewal of lease has not been canvassed before me. It is, however, submitted referring to Annexure-8 that on a representation filed by his two agnates/co-sharers in respect of part/portion of the land settled with the original settlee, an order was passed upon consideration of their representation by the respondent Divisional Commissioner vide order dated 04.02.2006. The request made by those applicants for renewal of lease which had already expired in the year 1987 was considered and declined. Consequently, lease made in their favour was also directed to be cancelled. The respondent Collector was directed to resume the property. Having regard to the said order, the respondent Collector by an order dated 17.02.2006 (Annexure-9) informed the petitioner apart from another co-sharer that the lease made in favour of the original settlee has been cancelled. A representation dated 20.04.2006 (Annexure-10) was filed by the petitioner before the respondent Collector explaining circumstances under which he was entitled to



renewal of lease. By another order dated 11.03.2013 (Annexure-11), the Collector did not accede to the request of the petitioner for review of the said order and informed the petitioner to take steps for settlement of the part/portion of the Khas Mahal land allegedly in his possession afresh in terms of the policy decision of the government called 'Khas Mahal Policy, 2011'. Aggrieved by these orders (Annexure-9 and 11), the present writ petition is filed.

Mr. Chitranjan Sinha, learned Senior Advocate while arguing in support of the application has urged that before passing any such order either refusing to renew the lease and/or cancelling the lease, the respondents are required to give a notice setting out the reasons therefor and provide an opportunity to file a reply/show cause thereto. A valuable right of the lessee or the descendants of the lessee cannot be snatched in the manner it has been done in the present case. In this connection, he has referred to the order passed by this Court in C.W.J.C. No. 9291 of 1998 (Annexure-4) as well as the order dated 02.07.2013 passed in C.W.J.C. No. 21920 of 2011. Reliance has also been placed on another order passed in the case of ***Brigadier Ravi Kumar Vs. State of Bihar and Ors*** reported in ***1997 (2) BLJR 1547*** wherein it has been observed that where a vested right is adversely affected by an administrative order or where civil consequence ensue, principles of natural justice apply even if the statutory provision do



not make any express provision for the same and the person concerned must be afforded opportunity of hearing before the order is passed. On going through the averments made in the writ application and on perusal of Annexure-8 and 9, it does not appear that any such opportunity of hearing was afforded to the petitioner who may be in occupation of part/portion of the settled land by virtue of being co-sharer of the family of late Bishundeo Narayan Singh. He has further submitted with reference to the conditions of lease (Annexure-1) that even if certain part/portion of the settled land is being used commercially, a permission was required to be taken. If there is no permission sought and granted, the respondent authority can penalize the settlee in terms of Clause-18 of the deed of lease (Annexure-1). All these submissions would have been advanced before the authority had an opportunity been granted before passing the order declining renewal of lease and/or cancellation of lease.

Counsel for the State, on the other hand, submits that the lease had already expired in the year 1987. On and from the expiry of lease, no right is vested in the lessee to claim such relief. He relies in this regard on a Division Bench judgment of this Court in the case of *Md. Mehendi Imam Vs. State of Bihar* reported in **2003 (2) PLJR 51**. He further submits that on the representation of the co-sharers of the petitioner, the orders dated 04.02.2006 and 17.02.2006 (Annexure-



8 and 9) were passed. The case of the petitioner stand on the same footing as indisputably the part/portion of the land said to be in his occupation was in terms of the lease executed in favour of the original settlee which has already expired. The petitioner, therefore, cannot legitimately raise such grievance. However, he is not in a position to submit that before passing the order (Annexure-9), an opportunity of hearing was granted to the petitioner. The review petition (Annexure-10) filed by the petitioner was declined by the Collector on the basis of the orders passed under Annexure-9. As I have noticed, before passing the order dated 17.02.2006 (Annexure-9), no opportunity of hearing was granted to the petitioner by issuing notice, the order contained in Annexure-9 becomes vulnerable in law in so far it relates to the petitioner.

This Court, in view of the aforesaid, finds substance in the said submission of Mr. Sinha. What shall be the stand taken by the petitioner before the respondent would not be a matter for consideration in the present writ petition. It is for both the parties to raise all relevant facts/issues before the authority for consideration before taking a decision on his claim for renewal or cancellation of the lease in respect of part/portion of the land settled originally with his grand father in the year 1937. It is to be kept in focus that the lease was for a period of 50 years with a renewal clause. The petitioner

could have made an application for renewal. Whether he made the application within time or continued in occupation for years together without renewal thereof and the legal consequence thereof are matters to be examined/considered by the Collector who is stated to be the appropriate authority.

Situated thus, this Court disposes of this writ application by permitting the petitioner to file an application before the respondent Collector requesting for renewal of the lease or for any other relief which he may be entitled to. If any such application is filed within three weeks from today, the respondent Collector shall consider his representation afresh and take appropriate decision and/or pass appropriate orders in accordance with law. In doing so, the respondent Collector shall not be precluded or prejudiced by the orders contained in Annexure-8, 9 and 11. It is expected that the exercise in the light of the present order is completed by the said respondent as quickly as possible preferably within two months from the date of presentation of the representation.

(Kishore Kumar Mandal, J)

Pankaj/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	16.09.2016
Transmission Date	