IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6143 of 2014

==

1. Vikas Kumar Kataruka, Son Of Kishore Kumar Kataruka, Resident of 71, Landmark, 175 Carter Road, Bandra (West), Mumbai- 400050.
2. Yash Kataruka, Son of Ajay Kumar Kataruka, Resident of Kataruka Niwas, South Gandhi Maidan, Police Station- Gandhi Maidan, District- Patna- 800001.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Old Secretariat, Patna- 800015.
2. The Secretary, Government of Bihar, Department of Registration, Excise and Prohibition, Vikas Bhawan, Bailey Road, Patna- 800015.
3. The Principal Secretary, Department of Revenue & Land Reforms, Government of Bihar, Old Secretariat, Patna- 800015.
4. The Collector, Patna.
5. The Assistant Inspector General (Registration), Government of Bihar, Department of Registration, Excise and Prohibition, Vikas Bhawan, Bailey Road, Patna- 800015.
6. The District Sub-Registrar, Patna Collectorate Compound, Patna.

.... Respondent/s

==

Appearance :

For the Petitioner/s	:	Mr. Amit Shrivastava, Adv. Mr. Girish Pandey, Adv.
For the Respondent/s	:	Mr. Indradeo Prasad, SC-27 Mr. Sunil Kumar Singh, AC to SC-27

==

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 17-02-2017

Mr. Amit Shrivastava, learned counsel appearing on behalf of the petitioners is permitted to make appropriate correction in so far as the lease period and date of lease is concerned as occurring in paragraph 4 of the writ petition during the course of the day.

Heard Mr. Amit Shrivastava, learned counsel appearing on behalf of the petitioners and Mr. Indradeo Prasad, learned Standing Counsel No.27 for the State.

The two petitioners are aggrieved by the order dated 15.5.2013 of the Assistant Inspector General (Registration), Government of Bihar, whereby the Assistant Inspector General (Registration) while rejecting the representation of the petitioners as regarding the rate of the stamp duty payable on the renewal of lease application has held that the rate as applicable on 15.2.2013 shall be the rate on which renewal would be charged and not at the rate which was prevalent in 2009. A copy of such order is impugned at Annexure-1 to the writ petition.

The contest at hand relates to a plot bearing No.1130 and 1171 situated on the north-east corner of Gandhi Maidan in the town and district of Patna on which two cinema halls presently, are situated which are run in the name of Mona Cinema and Eliphinstone Picture Palace and also houses some other commercial houses.

The lease for the plot was executed in between the Secretary of State for India in Council and predecessor in interest of the grand father of the two petitioners on 30.8.1929 for a period of 50 years ending on 29.8.1979. The said lease was renewed on 3rd of November, 1979 by the grandfather of the petitioners who succeeded the lessee, for a further period of 30 years ending 29.8.2009. A copy of the renewal is present at Annexure-3 to the writ petition. The grand father of the petitioners Late Kashi Prasad Kataruka expired in the year 1988 and when the lease-hold rights as requested, was transferred in favour of the two petitioners herein. The request for such lease right was accepted by the State and appropriate mutation was carried out.

As I have already indicated above, the renewal of the lease-hold right which took place on 30.8.1979 was to expire on 29.8.2009 and within the period stipulated in the lease, the two petitioners applied for its renewal on 15.5.2009 but the request was not acted upon by the Collector, Patna. A reminder was again made on 4.12.2009 followed by second reminder dated 1.7.2010 but again the respondents including Collector, Patna took no steps for renewal.

While the lease was pending renewal for the reasons attributable entirely to the respondents, that the Bihar Khas Mahal Policy, 2011 (hereinafter referred to as to ‘the Khas Mahal Policy, 2011’) was enforced in the State. The reasons for the delay in renewal thus, becomes apparent because it is after the enforcement of ‘the Khas Mahal Policy, 2011’ which replaces ‘the Khas Mahal Policy, 1953’ that corresponding amendments were made in the Stamp Act, 1899 on 15.2.2013 as manifest from Annexure-2 to the writ petition. It is armed with such developments and the amendment in the Stamp Act that a renewal fee of Rs.48,13,804/- under two heads i.e. Rs.28,88,500/- as Stamp Duty and Rs.19,25,304/- by way of Registration Fee, was raised by the respondent-State through the Collector, however the said amount was reduced to Rs.28,89,204/- and which has been duly paid by the petitioners but only after raising protest. Upon this deposit of renewal fee of Rs.28,89,204/- by the petitioners albeit under protest, renewal was granted. The petitioners filed their representations objecting to such realisation and which has been rejected by the Assistant Inspector General (Registration) by the order dated 15.5.2013 impugned at Annexue-1 to the writ petition and feeling aggrieved the petitioners are before this Court.

Mr. Amit Shrivastava, learned counsel appearing for the petitioners while placing the reliance on the judgment of this Court reported in **2006 (3) PLJR 538 (Brij Nandan Singh vs. The State of Bihar)** and the judgment of the Supreme Court reported in **(2009)14 SCC 716 (Residents Welfare Association, Noida vs. State of Uttar Pradesh),** submits that even when law is well settled on the issue and it is the rate prevailing on the date on which any agreement is executed, which is relevant for the purpose of calculation of stamp duty and not on the date when the actual registration takes place, yet the respondents have committed the serious illegality. He submits that the courts have held that a delay in the registration process, cannot act prejudicial to the interest of the parties, for realisation of higher stamp duty. He submits that in so far as the present case is concerned, the parties were bound by the terms and conditions as existing in the lease so initially executed and lastly renewed on 3rd of October, 1979 for a further period of 30 years expiring on 30.8.2009. He submits that the parties were bound by the renewal rate agreed upon them under the lease as existing on 30.8.2009 when neither the 'Khas Mahal Policy, 2011' nor the amendment dated 15.2.2013 in the Indian Stamp Act, 1899 had come into force. He submits that the delay on the part of the Collector to grant renewal cannot enure to the benefit of the State nor can they take benefit of their own laches.

It is further the argument of Mr. Shrivastava that even otherwise in view of the law laid down by this Court in the judgment reported in **2016 (1) PLJR 277 (Khas Mahal Citizen Welfare Society vs. The State of Bihar)** the respondents could not have enforced the terms and conditions of 'the Khas Mahal Policy, 2011' on the lease executed under the old policy of 1953. He submits that there is no contest on the fact that renewal was applied within time and much prior to the enforcement of 'the Khas Mahal Policy, 2011'.

The argument of Mr. Shrivastava has been contested by Mr. Prasad, learned Standing Counsel No.27 and who submits that a Letters Patent Appeal against the judgment and order of this Court in **Khas Mahal Citizen Welfare Society** (supra) has been filed by the State but agrees that the said Letters Patent Appeal has been dismissed for non-prosecution and is awaiting a restoration. He submits that the steps taken by the Collector for renewal are in tune with 'the Khas Mahal Policy, 2011' and it is made as per the terms and conditions mentioned therein.

I have heard learned counsel for the parties and I have perused the records and I am of the opinion that the writ petition is bound to succeed on the following grounds:

(a) The renewal became due on 29.8.2009 and when the parties were bound by the terms and conditions of the lease in terms of the old Khas Mahal Policy of 1953;

(b) It is undisputed that a request for renewal was made by the petitioners on 15.5.2009 i.e. within the stipulated period of 90 days of the expiry of the lease with its reminders on 4.12.2009 and 1.7.2010 all before the enforcement of 'Khas Mahal Policy, 2011';

(c) The delay is entirely attributable to the respondent-Collector in not granting renewal to the petitioners in terms and conditions found in the renewal clause of the lease present at Annexure-3;

(d) The judgment of the Court in the case of **Brij Nandan Singh** (supra) summarises the legal position in paragraph 11 of the judgment which is a reproduction of an earlier judgment and settles the issue that it would be the date of agreement which would be the governing factor for determination of the rate of stamp duty and not the date of registration especially when reasons are beyond the control of the vendor. Paragraph 11 of the judgment reads as under:

> "For the reasons stated above, we agree with the statement of law summarized in paragraph 19 of the judgment in **Shanti Devi Prasad** (supra) and is reproduced hereinbelow for ready reference:
>
> "19. As stated above, power under Section 47A of the Act can be exercised when the Registering Officer has reasons to believe that the market value of the property, which is the subject matter of conveyance, has not been rightly set forth with a view to fraudulently evade payment of the proper stamp duty. Mere lapse of time between the date of agreement and the execution of document will not be the determining factor that the document is under valued and such circumstances by itself is not sufficient to invoke the power under Section 47A of the Act unless there is lack of *bona fide* and fraudulent attempt on the part of the parties to the document to undervalue the subject of transfer with a view to evade payment of proper stamp duty."

(e) The observation of the Supreme Court in paragraph 52 of the judgment rendered in the case of **Residents Welfare**

Association (supra) further supports the case advanced by the petitioners and runs as under:

> "Since the stamp duty is to be charged on the consideration mentioned in the document under Article 63 of Schedule 1-B of the Act in case of an assignment of lease, the consideration mentioned on the document was adequate in respect of the time when the agreement of the transfer by way of lease was registered. It would be a different question that when the said deed is to be executed, the value of the said property has increased with the passage of time. The execution of the deed had not been delayed due to any fault on the part of the appellant and therefore he cannot be held liable for intentionally suppressing the value of the property. Moreover as we have noticed, the appellant did not make any undue delay in executing the deed after the Noida authorities issued the transfer memorandums."

In view of the legal position so discussed above, it is an act of arbitrariness on the part of the State through the Collector, Patna to have delayed the renewal of the lease-deed solely for the purpose of bringing it within the ambit of 'the Khas Mahal Policy, 2011' and the corresponding State amendment incorporated in the Stamp Act, 1899. The judgment rendered by this Court in case of **Khas Mahal Citizen Welfare Society** (supra) further goes to support the case of the petitioners to the extent that even this delayed action by the Collector cannot enure to the benefit of the State to realize a higher stamp duty, under the New Khas Mahal Policy, 2011.

Strictly speaking the case of the petitioners could not have been brought under 'the Khas Mahal Policy, 2011' because in the present case the renewal had become due on 29.8.2009 and the renewal application had already been filed by the petitioners within the stipulated time and much prior to the enforcement of 'the Khas Mahal Policy, 2011'. As I have already observed that delayed action by the State through the Collector could not have enured to the benefit of the respondents for unjust gains by misapplication of the policy which does not apply to the petitioners.

In view of the law so settled by this Court in the case of **Brij Nandan Singh** (supra) and the **Residents Welfare Association** (supra) the realisation of the stamp duty by the Collector, Patna for the renewal of the lease-deed of the petitioners in purported action under 'the Khas Mahal Policy, 2011' and the amendments dated 15.2.2013 incorporated in the Stamp Duty Act, 1899, is *per se* illegal and in arbitrary exercise of executive power.

In view of the legal position so discussed, the order of rejection passed by the Assistant Inspector General (Registration), Government of Bihar dated 15.5.2013 impugned at Annexure-1 cannot be upheld and is accordingly quashed and set aside. The Collector, Patna is directed to calculate the renewal fee payable by the petitioners on the renewal of the lease-deed as it stood on

30.8.2009 afresh and pass appropriate orders in accordance with law within a period of three months from the date of receipt/production of a copy of this order and the excess realisation made from the petitioners should be refunded to him within one month thereafter, failing which the balance amount would accompany interest calculated @ 8% per annum payable to the petitioners from the date the amounts were deposited until the amounts are refunded to the petitioners.

The writ petition is allowed.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	08-03-2017
Transmission Date	NA