

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2902 of 1994

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1. Smt.Riti Pandey
 - 2 (i) Arun Saroj Upadhyaya
 - 2 (ii) Punya Upadhyaya
 - 2(ii) Manasvi Upadhyaya

.... Petitioner/s

Versus

1. The State of Bihar
2. The Secretary, Department of Revenue and Land Reforms, Old Secretariat, Patna
3. The Executive Engineer. House and Building Construction Division-II, Patna

.... Respondent/s

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Appearance :

For the Petitioners: M/s. Amaresh Kumar Sinha & Priyam Kumari

For the Respondents: Mr. (AAG2) SC 21

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 22-02-2018

Heard both sides.

The petitioners have filed this writ petition for quashing the letter No. 173 dated 11.03.1994 (Annexure-6) issued under the signature of the Executive Engineer, House and Building Construction Division-II, Patna

The requisite and relevant facts relevant for disposal of this writ petition are that land of plot No. D (part), North Bailey Road, holding No. 226A, circle No. 249, area 0.157 acre was leased in favour of Kumari Rashmi Ojha @ Mulloo and Kumari Riti Ojha @ Tulloo, minor daughters of Late Smt. Kumudwati Ojha and Late Mr. R. S. Ojha, ICS under the guardianship of Smt. Indumati Tiwari on 26.06.1952 for 30 years by a deed of lease. According to covenant, as contained in Clause-14 of the lease deed, the petitioners filed petition for renewal of the lease on 08.02.1984 but the same was not renewed.



The petitioners continued to pay rent and get rent receipts with regard to the premises. The petitioners continued in their effort to persuade respondent No.3 to execute the document for renewal of lease but respondent No.3 vide letter dated 11.03.1994 (Annexure-6) communicated the petitioners that on account of violation of Clause-2 and 7 of the lease deed the lease cannot be renewed afresh and the lease is cancelled with effect from issuance of the letter.

The learned counsel for the petitioners submits that on perusal of Clause 2 and 7 of the lease deed, it would appear that the lessee shall not transfer, assign, sublet or part with the possession of the said demised land and premises or any part thereof except with previous sanction of Government in the P.W.D. in writing and on payment of a fee equal to 25% of the yearly rental. Clause 7 contains the condition that lessee shall not correct any building, the plans, specifications, lay out or architect of which are not previously approved by the Government in the P.W.D and are not in conformity with the Government Rules for the time being in force or make any addition to, or any alteration in or demolish or remove any building now or hereafter to be corrected on the demised premises without previous approval of the Government in the P.W.D. in writing. It is submitted that neither Clause 2 nor Clause 7 of lease deed confer any power on respondent No.3 to cancel the lease deed or refuse to renew the lease deed on the application of the lessee. It is further submitted that Clause 14 of the lease deed says that if three months prior to the expiration of the said term the lessee shall notify the Executive Engineer that the lessee is desirous of taking a new lease of the said premises and shall have duly observed and performed all the terms and conditions of this lease the lessee shall on the expiry of the term of this lease be entitled to an unlimited option of renewal of the lease



of the said premises at an interval of every 30 years on the express condition that the Government in the P.W.D. shall have the full right to increase the rate of rent not exceeding double the amount of the previous rent at every renewals but otherwise on same terms and conditions and subject to the same covenant and agreement, including this covenant for renewal as are contained in this lease. It is submitted that Clause 14 makes it amply clear that if the lessee is desirous to get the lease on the same terms and conditions the Government in P.W.D. has no option but to renew the lease on the conditions contained therein.

On perusal of the letter, as contained in Annexure-6, as well as deed of lease (Annexure-1) it is evident that the Executive Engineer has cancelled the lease and refused to renew the lease in favour of the petitioners on the ground that the petitioner violated the conditions as contained in Clause 2 and 7 of the lease deed. Clause 2 and 7 does not empower the lessor to cancel the deed of lease but only put certain conditions that the lessee shall not transfer, assign, sublet or part with the possession of the said demised land and premises or any part thereof. Clause 2 itself shows that in the case of succession by inheritance no fee as aforesaid shall be payable, the person succeeding shall apply forthwith to the Executive Engineer, Central Division, for mutation of names and such application shall bear the court fee stamp prescribed by law. Clause 7 of the lease deed says that if the lessee makes any construction or alter the premises without the previous approval of the Government in P.W.D. and on breach of such the lessor may without prejudice to any other right or remedy require the lessee on one month's notice in writing to demolish any such building or any addition to the existing sanctioned building and restore the altered premises to their former condition and the lessee



shall not be entitled to any compensation whatsoever in respect thereof. Therefore, it is crystal clear from perusal of Clause 2 and 7 of the deed of lease (annexure-1) that the Executive Engineer, P.W.D. has got no jurisdiction either to cancel the lease or refuse to renew the lease in favour of lessee after expiration of lease deed under Clause 2 and 7 of the lease deed. Clause 14 of the lease deed also prescribed the procedure for renewal of the lease and in view of provisions, as contained in Clause 14, the Executive Engineer has got no power to cancel the lease deed or refuse to renew the lease once the lessee after expiry of lease period applied for renewal of lease.

Therefore, I find that the impugned letter No. 173 dated 11.03.1994 (Annexure-6) is illegal. Accordingly, the same is set aside. This writ petition is, thus, allowed.

(Prabhat Kumar Jha, J)

BKS/-

AFR/NAFR	NAFR
CAV DATE	N.A
Uploading Date	09.03.2018
Transmission Date	N.A.

