

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11744 of 2019

1. The State of Bihar through Collector, Patna
2. The Collector, Patna

... .. Petitioner/s

Versus

Pushpangini Nayak, W/o Late Vishwanath Nayak, R/o Sinha Library Road,
Khas Mahal Plot No. 366, P.S. Kotwali, District-Patna

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Md. Khurshid Alam, AAG-12 Mr. Asif Kalim, AC to AAG-12
For the Respondent/s	:	Mr.

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 24-06-2019

The State of Bihar has put to challenge an order dated 24.01.2018, passed by the Chairman-cum-Member, Board of Revenue, Bihar in Eviction Case No. 27 of 2014 whereby he has set aside an order passed by the State Government, communicated to the Collector, Patna through letter No. 15 dated 03.04.1999 whereby a decision of renewal of lease in respect of a Khas Mahal land in favour of sole respondent was cancelled. After coming into force of New Khas Mahal Policy in 2011, the Collector, Patna had made a recommendation to the Commissioner, Patna Division for respondent's eviction from the Khas Mahal land and recovery of possession of the said land. The Commissioner, Patna had passed an order dated 02.06.2014 for respondent's eviction from the land in question. The said order dated 02.06.2014 has also been set



aside by the Chairman-cum-Member, Board of Revenue, Bihar by the impugned order dated 24.01.2018.

2. I have heard Mr. Khurshid Alam, learned Additional Advocate General No. 12 on behalf of the petitioner. The dispute relates to Khas Mahal M.S. Plot No. 366 admeasuring 3 ½ katha located at Patna-Gaya road under Mauza Badra, Patna. It is stated in the writ application that the plot was originally given on lease to Akhouri Chandra Shekhar Sinha on 05.11.1934 for 50 years for residential purpose. The widow of the original lessee had transferred 3 katha 10 dhur of the said land in favour of late Vishwanath Nayak on 25.08.1973. After the death of Vishwanath Nayak, his widow Pushpangini Nayak (the sole respondent) came in possession over the said land. The husband of the sole respondent had applied for renewal of lease. This is not in dispute that by a Government order issued on 29.08.1995, a decision was taken to renew the lease for 30 years from 05.11.1984. A draft deed for renewal of lease was submitted in the light of the order of the State Government. In the said draft lease deed, it was mentioned that a house was constructed by lessee over the land, in conformity with a map duly sanctioned by the Patna Regional Development Authority (PRDA). The Additional Collector, Patna, in the light of the said disclosure in the draft lease deed, put the



said lessee Vishwanath Nayak to a show cause notice dated 22.08.1996 stating therein that the map for construction of house was required to be approved by the Collector, Patna also and, therefore, he should explain the circumstance in which construction of the house was made without approval of the Collector. The said letter dated 22.08.1996 has been brought on record by way of Annexure-P/2. It was indicated in the said letter that if no show cause was received by 25.08.1996, it would be presumed that construction of the house had been done in deliberate violation of the conditions of the lease. On 03.04.1999, the Revenue and Land Reforms Department, Government of Bihar communicated to the Collector, Patna about cancellation of the decision of renewal of lease dated 29.08.1995. The Department, thereafter, asked the Collector to give to the lessee, an offer of fresh lease at current market rate, which was duly communicated vide letter No. 1233 dated 23.12.1999. The lessee, however, did not respond. A notice was, thereafter, issued on 12.07.2001 to the lessee intimating that since they had failed to give their consent for fresh lease, the possession of the land should be handed over to the Circle Officer, Patna Sadar. The Collector, Patna, after coming into force of New Bihar Khas Mahal Policy, 2011 (hereinafter referred to as 'the Policy, 2011'), again wrote to the respondent on



31.12.2012 to enter into a fresh lease on current market rate failing which the State would be compelled to proceed to take possession of her land in accordance with the provisions contained in the Policy, 2011. The respondent, however, did not furnish her consent to take fresh lease of the plot in question. In this background, the Collector, Patna proceeded to take action against her eviction from the plot under Clause-14 of the Policy, 2011 and made his recommendation accordingly before the Commissioner, Patna Division. The Commissioner initiated proceeding for eviction of the respondent, which was resisted by the respondent. The Commissioner passed his order dated 02.06.2014 in Misc. Appeal No. 274 of 2013 holding that respondent was liable to be evicted from the plot in question.

3. It transpires that the respondent had approached this Court by filing a writ application giving rise to CWJC No. 58 of 2014, questioning the proceeding for her eviction from the plot in question. There was an interim order passed on 23.01.2014 by this Court in CWJC No. 58 of 2014 to the effect that final order passed, if any, in the proceeding before the Commissioner, Patna shall not be given effect to until disposal of the writ application. When the order dated 02.06.2014 was passed by the Commissioner, Patna Division, CWJC No. 58 of 2014 was pending and in the light of



the interim order, though the Commissioner, Patna came to a conclusion that the respondent was liable to be evicted from the land in question, mentioned in his order that till disposal of the writ application, the order of eviction shall not be given effect to. The respondent, thereafter, questioned the order of the Commissioner dated 02.06.2014 before the Board of Revenue, Bihar, Patna which gave rise to Eviction Case No. 27 of 2014, which has been allowed by the impugned order dated 24.01.2018. Consequently, CWJC No. 58 of 2014 has been disposed of as having become infructuous in the light of the impugned order dated 24.01.2018, passed by the learned Chairman-cum-Member, Board of Revenue, Bihar.

4. These facts have been noted to appreciate the background in which the present writ application has been filed on behalf of the State of Bihar through Collector, Patna. A statement made in paragraph-7 of the writ application deserves to be noted to the effect that in December, 1996 a notice was issued to the lessee regarding encroachment by him over 630 sq. ft. of Government *Nala*, which was admitted by him in his reply and had stated that he had made an application for settlement of the encroached area of *Nala* in his favour.



5. Mr. Khurshid Alam, learned Additional Advocate General No. 12 appearing on behalf of the petitioner has stated that construction made over an adjoining public land in the nature of *Nala* is a serious breach of the terms of the lease, and, therefore, the decision of the State Government to cancel the lease in the year 1999 was valid. He has further argued that in terms of the conditions of lease, the lessee could not have made constructions without approval of the Collector, Patna of the map sanctioned by the PRDA. He has further submitted that since the lessee refused to accept the offer of fresh lease on the basis of current rate, the Commissioner did not have any other option but to order for eviction of respondent from the land in question for the purpose of recovery of possession. He has also questioned the jurisdiction of the Board of Revenue to entertain an appeal against the order of eviction passed by the Commissioner, Patna, there being no such provision under the Policy, 2011.

6. I have carefully gone through the pleadings in the writ application with the documents annexed thereto and the impugned order passed by the learned Chairman-cum-Member, Board of Revenue, Bihar. I must note at the very outset that there is no plea taken in the writ application that there is any error of fact in the impugned order. Admittedly, the initial lease was for a period of 50



years commencing from 05.11.1934. It is evident from Annexure-P/2 that it was Government order No. 1134 dated 29.08.1995 for renewal of lease for a period of 30 years from 05.11.1984. Nearly one year after the said Government order dated 29.08.1995, by letter dated 22.08.1996, the lessees were asked to show cause why the house was constructed without the approval of the map by the Collector. The said letter dated 22.08.1996 does not mention any illegal construction or construction, deviating from the map approved by the PRDA. There is a technical objection raised that construction had been made without approval of the map by the Collector. The letter was issued on 22.08.1996 by the Collector and the lessee was asked to submit his response within three days i.e. by 25.08.1996. There is no mention in the writ application nor does it appear from any other material that the said letter dated 22.08.1996 was, in fact, served on the respondent. Thereafter, the Department issued a letter dated 03.04.1999 addressed to the Collector, Patna, which has referred to a letter written by the Commissioner, Patna dated 17.12.1997, whereby the Government order dated 29.08.1995 for renewal of lease came to be cancelled. Evidently, thus, by subsequent letter dated 03.04.1999, earlier decision of the State Government to renew the lease came to be cancelled. It is nowhere mentioned that the respondent was ever



given any opportunity to show cause against cancellation of the decision of the State Government to renew lease with effect from 1984. It is also evident on reading of letter dated 03.04.1999 that it does not specifically refer to condition of lease which the lessee had violated.

7. Coming to the impugned order, now, I notice that a strong objection was taken on behalf of the State of Bihar over maintainability of the case before the Chairman-cum-Member, Board of Revenue, Bihar in view of the pendency of CWJC No. 58 of 2014. In my view, the said objection has rightly been overruled in the impugned judgment and order as it was clearly indicated in the interim order passed by this Court that though the proceeding for eviction might proceed but any order of eviction shall not be given effect to until disposal of the writ petition. The order passed by the Commissioner being appealable under Clause-14 of the Policy, 2011 before the Board of Revenue, the same could be entertained in accordance with law.

8. The Chairman-cum-Member, Board of Revenue, Bihar framed altogether five issues after having considered the rival contentions of the parties including issue no. 3 which goes to the root of the matter, which reads thus :-

“(iii) Whether there has been any violation of principles of natural justice



while passing the order of cancellation of lease dated 03.04.1999?”

9. There is specific finding in paragraph-19 of the impugned order which reads thus :-

“19-Having gone through the records called from the Court below as well as the notings made in the file as well as the annexures appended to the Memo of Appeal and having gone through the judgments cited by the appellant, I am satisfied with the submission made by the appellant that the order of termination of lease dated 03.04.1999 passed by the State of Bihar vide letter No. 15(Annexure-14 to the Memo of Appeal) has been passed without giving the petitioner any opportunity of hearing or being given any opportunity to meet the grounds upon which the recommendation of the Collector dated 17.12.1997 was based.”(Emphasis mine)

10. It is not the case of the State of Bihar that the said finding recorded in paragraph-19 of the impugned order suffers from any factual infirmity. This is to be noted that there is no averment in the writ application that prior to issuance of order dated 03.04.1999, the lessee was given any opportunity to represent against the grounds of cancellation of lease. As has already been noticed, it was not mentioned in the letter dated



22.08.1996 (Annexure-P/2) that any penal action of cancellation of lease itself was intended. Further, it is evident from the impugned order that the learned Chairman-cum-Member, Board of Revenue, Bihar had perused the concerned file. He has noticed that after the lessee was granted approval by the State Government for renewal of lease in 1995, fresh objections were raised on 22.01.1996 in respect of (i) inducting tenants for residential purposes without the approval of the Collector and (ii) use of basement by the son of the lessee as his office, which was commercial in nature. The lessee had responded to such objections, whereafter, a personal inspection was carried out by the Additional Collector. Reply of the lessee was accepted by the Collector on 19.03.1996 and accordingly directions were issued for renewal of the lease. The lessee was asked to submit draft copy of the lease, which was done on 23.03.1996. A fresh objection was, thereafter, raised, this time in respect of construction of house without approval of the Collector at the instance of the Government Pleader. What happened thereafter, has already been noticed above and need not be repeated.

11. The Chairman-cum-Member, Board of Revenue, Bihar has noted the submission made on behalf of the lessee that the issue with regard to encroachment of *Nala* was raised in 1989



itself, which stood condoned and waived with the issuance of renewal of lease by the State Government by its letter dated 29.08.1995. A reference has been made in the order of similar encroachment of same *Nala* by Bihar Industries Association and heirs of late Akhouri Chandra Shekhar Sinha in whose cases the lease has been renewed.

12. After having considered these aspects and other aspects as mentioned in the impugned order, the Chairman-cum-Member, Board of Revenue, Bihar has mentioned that the infraction that was being alleged of construction of the house without approval of the Collector was a curable defect and could have been set right even by *post facto* sanction. He has opined that recommendation of the Collector for termination of the lease and action of the State in cancelling the lease was highly unfair, unreasonable and the penalty was grossly disproportionate.

13. I do not find any legal or factual infirmity in the impugned order. The proceeding for eviction of the lessee was rooted in the decision contained in letter dated 03.04.1999 whereby the Government order to renew the lease was cancelled. The said action was indisputably in violation of the principles of natural justice. The Chairman-cum-Member, Board of Revenue, Bihar has rightly relied on the decision of this Court in case of



Khas Mahal Citizen Welfare Society vs. State of Bihar & Ors.

reported in **2016(1) PLJR 277** that cancellation of lease prior to coming into force of the Policy, 2011 is to be regulated by the Khas Mahal Policy, 1953 alone. In the present case, decision to cancel renewal of lease was taken in 1999 without affording the lessee any opportunity, let alone reasonable opportunity, of being heard.

14. The Chairman-cum-Member, Board of Revenue, Bihar has concluded in paragraph-33 as follows :-

“33- In view of the aforesaid discussion I am of the opinion that neither the order passed by the State Government cancelling the lease by its letter No. 15 dated 03.04.1999 nor the recommendation of the Collector to cancel the lease for issue as has been held aforesaid that all other objections had already been condoned/ abandoned/waived by the State and Collector of construction without the approval of the Collector and the subsequent order of the Collector dated 30.06.2013 and order dated 02.06.2014 passed by the Commissioner in Miscellaneous Appeal No. 274 of 2013 are sustainable in law and are accordingly set aside and quashed. As a consequence of this order the Collector is directed to initiate process of renewal of the original lease that had expired on 06.12.1984 and the State is directed to consider grant of approval on the



recommendation of the Collector for renewal of the lease.”

15. I am not inclined to interfere with the impugned order for the reasons noted above.

16. It is, however, clarified that any observation made in the impugned order dated 24.01.2018 or in the present order shall not be treated to be validating any illegal construction made over Government *Nala*. The condonation/abandonment/waiver in respect of such act of the lessee is confined only for the purpose of and in relation to renewal/cancellation of lease of the land in question and not otherwise. If any person or lessee has made construction over a public land not settled with him in accordance with law, the same can be removed by the authorities after following due process of law.

17. This application is dismissed but with the observation as noted above.

(Chakradhari Sharan Singh, J)

Rajesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.10.2019
Transmission Date	NA

