

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6546 of 2017

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Shri Sanjay Singh son of Late Nityanand Singh, resident of 134/B, Mohalla,
P.O. and P.S.- Sri Krishnapuri, District- Patna at present resident of A-13,
Friends Colony East, New Delhi, 110065.

... .. Petitioner

Versus

1. Patna Municipal Corporation, Mauryalok Complex, Patna, through its
Municipal Commissioner.
2. Municipal Commissioner, Patna Municipal Corporation at Mauryalok
Complex, Patna.
3. Vigilance Officer, Patna Municipal Corporation at Mauryalok Complex,
Patna.
4. Executive Officer, Patna Municipal Corporation at Mauryalok Complex,
Patna.

... .. Respondent/s

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with
Civil Writ Jurisdiction Case No. 2432 of 2017

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Smt. Arti Banerjee @ Arati Banarjee Wife of Late Debanshu Banerjee,
Resident of Plot No. 215, Type- A, Srikrishnapuri, P.S. Srikrishnapuri, District
and Town- Patna.

... .. Petitioner/s

Versus

1. Patna Municipal Corporation, Mauryalok Complex, Patna, through Town
Commissioner.
2. Town Commissioner, Patna Municipal Corporation at Mauryalok Complex,
Patna.
3. Assistant Engineer, Nutan Rajdhani Anchal, Patna Municipal Corporation,
Mauryalok Complex, Patna.
4. Additional Town Commissioner, Patna Municipal Corporation at Mauryalok
Complex, Patna.
5. Vigilance Officer, Patna Municipal Corporation at Mauryalok Complex,
Patna.
6. Executive Officer, Patna Municipal Corporation at Mauryalok Complex,
Patna.
7. Maa Shambhavi Engicon Pvt. Ltd. Through its Managing Director, Rajesh
Kumar, Arya Kumar Road, Near Basti School, Patna

... .. Respondent/s



with
Civil Writ Jurisdiction Case No. 7404 of 2017

Prakash Kumar son of Sri Murli Prasad Sinha resident of Plot No. 8E, Road No. 12, Rajendra Nagar, P.S. Kadam Kuan, Patna - 800001.

... .. Petitioner

Versus

1. Patna Municipal Corporation Through Municipal Commissioner, Patna
2. Municipal Commissioner, Patna Municipal Corporation.
3. Assistant Engineer, Patna Municipal Corporation.
4. Vigilance Officer, Patna Municipal Corporation.
5. Executive Engineer, Patna Municipal Corporation.
6. Junior Engineer, Patna Municipal Corporation. Patna Municipal Corporation has its registered office at Maurya Lok Complex, Opposite Kotwali Police Station, Patna - 800001.

... .. Respondent/s

with
Civil Writ Jurisdiction Case No. 10975 of 2017

1. Gajendra Mohan Mishra Son of late Justice Gobind Misra, residence in India Plot No. 165B Srikrishnapuri, Sahdeo Mahto Marg, Patna 800001.
2. Gunendra Mohan Misra, Son of late Justice Gobind Mohan Misra, Permanent Resident of Plot No. 165B Srikrishnapuri, Sahdeo Mahto Marg, Patna 800001 and at Present residing at Block B-304, Bansal Plaza, Station Road, Ranchi-834001.
3. Nirendra Mohan Mishra, Son of Late Justice Gobind Mohan Misra Permanent Resident of Plot No. 165B Srikrishnapuri, Sahdeo Mahto Marg, Patna 800001.

... .. Petitioner/s

Versus

1. The Patna Municipal Corporation, Patna through the Patna Municipal Commissioner, Maurya Lok Building, Patna 800001.
2. The Patna Municipal Corporation, Patna Municipal Corporation, Maurya Lok Building, Patna 800001
3. Prakash Kumar @ Munna ji, Son of Murali Prasad Sinha, Apurana Developers private Limited, Plot No. 8E, Road No. 12, Rajendra Nagar, PS-Kadamkuan, Patna.

... .. Respondent/s

Appearance :

(In CWJC No. 6546 of 2017)

For the Petitioner/s

:

Mr. Jitendra Kishore Verma Adv.



For the Respondent/s : Mr. Prasoon Sinha, Adv.

(In CWJC No. 2432 of 2017)

For the Petitioner/s : Mr. Jitendra Kishore Verma Adv.
For the Respondent/s : Mr. Yashraj Bhardhan, Adv.
For the PMC : Mr. Prakash Chandra, Adv.

(In CWJC No. 7404 of 2017)

For the Petitioner/s : Mr. Chitranjan Sinha, Sr. Adv.
Mr. Siddhartha Prasad, Adv.
For the Respondent/s : Ms. Prabhakar Singh, Adv.

(In CWJC No. 10975 of 2017)

For the Petitioner/s : Mr. Umesh Prasad Singh, Sr. Adv.
Mr. Nilanjan Chatterjee, Adv.
For the Respondent/s : Mr. Prabhakar Singh, Adv.

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
CAV JUDGMENT

Date : 02-11-2020

With the consent of the parties, all the four writ petitions have been taken up for hearing together since the issues to be adjudicated in the said cases are the same, hence they are being disposed of by the present common Judgment.

Facts of the Case (CWJC No. 6546 of 2017)

2. At the outset, this Court would advert to the facts of the first case i.e. CWJC No. 6546 of 2017 (Sanjay Singh vs. Patna Municipal Corporation & Ors.). The said writ petition has been filed for setting aside the order dated 23.03.2017 passed in Appeal No. 137 of 2014 (arising out of Vigilance Case No. 97A of 2013), by the Municipal Building Tribunal, Patna Division, Patna, whereby and whereunder the appeal of the petitioner has been dismissed. The petitioner has further prayed for setting aside the order dated 28.11.2014 passed in Vigilance Case No. 97A of 2013 by the



Commissioner, Patna Municipal Corporation, Patna and for restraining the authorities from taking the possession of the building from the lessee or sealing the same in pursuance to the said order dated 28.11.2014 as also to permit the petitioner to carry on with his construction work in accordance with law. Lastly, it has been prayed to compensate the petitioner for the loss occurred on account of illegal and high-handed action by the corporation authorities.

3. The brief facts of the case are that prior to the year 1974, the Patna Improvement Trust, created under the Bihar Town Planning and Improvement Trust Act, 1951, had settled the land vested in it with the father of the petitioner, late Nityanand Singh. In fact, two allotments were made to the father of the petitioner, one pertaining to 5.209 kathas of land and another for 1.795 kathas of land, whereafter possession was also handed over to the father of the petitioner. A lease deed dated 16.6.1966 was then executed for the first allotment i.e. with regard to 5.209 kathas of land, admeasuring 788.33 sq. yards, in between the Patna Improvement Trust and the father of the petitioner, pertaining to Plot No. 134/B, Sri Krishnapuri, Patna, for a period of 99 years with effect from 26.4.1966. After the death of the father of the petitioner, a fresh lease deed cum agreement was executed with regard to the second allotment of plot, admeasuring 271.44 sq. yards, in



between the Patna Municipal Corporation and the petitioner herein for a period of 99 years with effect from 03.03.1970. At this juncture itself, it would be appropriate to reproduce the relevant clauses of the aforesaid lease deed herein below:-

“(1) That this lease has been granted to the Second Party for constructing a building for the express purpose of residence, subject to the proprietary right in the land demised remaining with the First Party._

(2) That subject to the provisions of clause 4 following, the lease shall be a lease for 99 years with an option to renew the lease on the same terms and conditions as herein appearing for a further period of 99 years; (the First Party shall however give six months’ notice before the expiry of the period of this lease enquiring whether the Second Party is willing to renew the lease, and on expression in writing of such willingness on the part of Second Party to renew the lease no fresh premium shall be chargeable).

Provided, however, that if the Government of Bihar charges any premium for the renewal of the lease for the Rajendra Nagar area, then a proportionate premium so charged shall be chargeable by the First Party from the Second Party at the time of renewal of this lease.

(3) That this lease has been granted subject to the terms, conditions and limitations on which the lease has been granted by the Government of Bihar to the First Party and subject to the strict observance by the Second Party of the provisions of the Patna Improvement Trust (Disposal of Land)



Rules, 1957 which the Second Party has read and accepted.

(4) That the Second Party shall start the construction of the building within one year of the execution of this lease and complete the building within three years from the date of commencement of such construction according to such plan and specifications as may be prescribed by the Trust or any other plans and specifications duly approved by the Trust and in accordance with the provisions of all such enactments, rules and bye-laws as may be in force for the time being.

Provided that the said period of three years may be extended by the Trust on reasonable cause being shown, of which the Trust shall be the Judge.

(5) That the Second Party shall not make any construction on or excavation in the aforesaid plot without the previous approval in writing of the First Party of the plans and specifications of the proposed construction or the excavation as the case may be.

(6) That the Second Party shall not permit any part of any building constructed on the aforesaid plot to be used for any purpose other than for which this lease has been granted including uses ancillary thereto.

(10) That the Second Party shall not keep any cattle or horse in the foresaid plot except on obtaining a license therefor from the Trust in default of which the Second Party shall pay to the First Party a penalty of Rs. 1/- per head of cattle or horse per day until license is obtained or the cattle or horse is removed from the plot by the



Second Party. The Second Party however shall not be entitled to any license for keeping any cattle or horse unless he makes a proper arrangement to the satisfaction of the First Party for keeping such cattle or horse, and unless he pays a license fee of Rs. 2/- per year per head of cattle or horse, and where such license is granted by the Trust the Second Party shall strictly observe the condition of the license laid down by the Trust.

(12) That except with the previous consent of the First Party in writing and subject to such terms and conditions as may be prescribed by the First Party, the Second Party shall have no right within ten years of the date of this indenture to transfer by way of sale, exchange or otherwise the aforesaid plot including the structures constructed thereon or the right, title or interest therein; but, no such consent shall be required in matters of gift in favour of an heir or relation or of Will in respect of the said properties.

(15) That the First Party shall have the right to re-enter and resume possession of the aforesaid plot including the structure thereon after paying such compensation as the Board of Trustees may determine in cases of breach of any of the provisions of the Patna Improvement Trust (Disposal of Land) Rules, 1957 as well as in cases of breach of any of the provisions set forth in clauses 1, 5, 6 and 12 only of this lease.

Provided that where the Second Party objects to the quantum of compensation determined by the Trust under the clause of the resumption of possession of his land and the structures, if any, standing thereon, the dispute shall be referred to



a judicial officer to be appointed by the State Government, whose decision shall be final and binding on both parties.”

4. In the year 1974, i.e on 19.09.1974, the Bihar Regional Development Authority Ordinance was promulgated and was kept alive by successive ordinance and finally, it took the shape of Bihar Regional Development Authority Act, 1974, in the year 1981. The Bihar Town Planning and Improvement Trust Act, 1951 was repealed by the aforesaid Bihar Regional Development Authority Act, 1974 (hereinafter referred to as “the Act, 1974”) and the Patna Improvement Trust was succeeded by the Patna Regional Development Authority (hereinafter referred to as “the PRDA”). Subsequently, the aforesaid Bihar Regional Development Authority Act, 1974 was repealed by the Bihar Municipal Act, 2007 and the Patna Municipal Corporation has stepped into the shoes of P.R.D.A. since the year 2007.

5. It is the case of the petitioner that he had given an application to the Municipal Commissioner vide letter dated 12.8.2011 for the purposes of issuance of no objection certificate for passing of the map for reconstruction of residential building, whereafter vide letter no. 5021 dated 21.12.2011, no objection certificate was given by the Municipal Commissioner, Patna Municipal Corporation, to construct a residential building as per the provisions contained in the Building Bye-laws and after sanction of the map by the listed approved Architect at the end of the



Corporation as also according to the terms and conditions of the lease deed.

6. It is the further case of the petitioner that the Patna Municipal Corporation had issued a notice dated 15.6.2012 to the petitioner herein stating therein that a survey was conducted with regard to Plot No. 134/B, Srikrishna Puri and it has transpired that in the said plot, the old building is being demolished for constructing a new building / multi storied building, hence, the petitioner should fill the enclosed declaration form along with evidence and submit the same in the office of the Corporation within seven days, showing therein that the building, sought to be constructed over the plot in question, does not contravene the provisions of Bihar Regional Development Authority Act, 1981, P.R.D.A (Disposal of Land) Rules 1978, Bihar Apartment Ownership Act, 2006, Bihar Nagarpalika Adhiniyam, 2007 and the terms and conditions of the lease deed. The petitioner had then submitted his reply vide letter dated 25.6.2012, enclosing copies of the documents showing mutation, N.O.C., approved sanctioned plan of the map duly certified by the Architect etc. with regard to the aforesaid Plot No. 134/B, Srikrishna Puri, Patna.

7. The petitioner has also averred in the writ petition that the construction of the building in question over Plot No. 134/B, Sri Krishnapuri, Patna, is being done, specifically as per the map sanctioned by the Patna Municipal



Corporation for residential purposes only, after N.O.C. has been given by the Corporation and the building map has been approved by the certified Architect of the Patna Municipal Corporation, nonetheless, a show cause notice was issued to the petitioner, published in the newspaper on 11.5.2013, as also claimed to have been intimated to the petitioner by the Vigilance Officer vide memo dated 28.09.2013, to stop the ongoing construction work and to show cause as to why the lease deed be not cancelled for violating the terms and conditions of the lease. The petitioner had then filed his reply to the show cause notice on 15.10.2013 (wrongly written in the order-sheet as 18.10.2013) along with the relevant documents and had subsequently submitted written notes of arguments as well.

8. The Municipal Commissioner, by the impugned order dated 28.11.2014, passed in Vigilance Case No. 97A of 2013, had then passed the following orders with regard to the under construction building and the premises pertaining to Plot No. 134/B, Sri Krishnapuri, Patna:-

“(i) In light of the petitioner herein having contravened the provisions of the land disposal rules as also the terms and conditions of the lease deed, the premises in question along with the under construction building is resumed and the petitioner will be paid 6 % interest over the entire installments deposited by him.



(ii) The building and premises shall be utilized by the Patna Regional Development Authority for its own use.

(iii) The Estate Officer, Patna Regional Development Authority, presently known as Patna Municipal Corporation, is directed to take possession of the land in question within 30 days as also calculate the amount payable to the petitioner herein on account of resumption of his land and notify the same.

(iv) Since the building is under construction, the Managing Director, South Bihar Power Distribution Company Ltd./ G.M., PESU shall ensure that no electricity connection is given in the said premises and in case, any electricity connection is present in the said premises, the Managing Director, South Bihar Power Distribution Co. Ltd., shall ensure that the same is disconnected within seven days.

(v) The District Additional Registrar, Patna, is directed not to register any part of the under construction building situated at Plot No. 134B, Sri Krishnapuri, Patna.

(vi) The Executive Officer, New Capital Circle and the Executive Engineer, New Capital Circle are jointly directed not to provide any public services



like sewer, water supply, drainage etc. without the orders of the Municipal Commissioner.

(vii) The Director, Town Planning, shall give a report as to what changes are necessary for using the said building for the purposes of Patna Regional Development Authority in accordance with the master plan, S. K. Puri layout and the building bye-laws.

(viii) It shall be the responsibility of the local police station to ensure that no construction is carried out in the said premises and if any construction is carried out then FIR shall be registered on their own statement.

9. The petitioner had challenged the aforesaid order dated 28.11.2014, passed by the Municipal Commissioner, Patna in Vigilance Case No. 97A of 2013 before the Municipal Building Tribunal, by filing an appeal, which was numbered as Appeal No. 137/ 2014, however, the Municipal Building Tribunal by an order dated 23.03.2017 has been pleased to hold that the Municipal Building Tribunal has no jurisdiction to decide the issue as to whether the resumption of the leased property, involved in the appeal, has been rightly resumed by the Municipal Commissioner, Patna Municipal Corporation or not.

10. Now, it would also be apt to note the contentions of the Respondent-Patna Municipal Corporation, as averred in



the counter affidavit filed in the present case. It has been stated in the counter affidavit that the plot in question i.e. Plot No. 134/B situated at Srikrishna Puri, Patna was allotted to one Nityanand Singh by a registered deed of lease for the purposes of constructing a building, expressly for residential purposes. After the death of the said Nityanand Singh, a fresh deed of lease was executed by the PMC in the name of the petitioner herein, who is the son of the late Nityanand Singh, the original lessee.

The respondents have referred to one writ petition bearing CWJC No. 8512 of 2013 (Narendra Mishra vs. The State of Bihar & Ors.), which was filed against the construction of high rise buildings in densely populated localities, lying within the jurisdiction of the Patna Municipal Area, in violation of the Building bye-laws and the same was treated as PIL by a learned Division Bench of this Court, whereafter various directions were given from time to time and it was also directed that it be ensured that no apartment, complex or multi storied building is constructed beyond 11 meters and up to 15 meters in height unless the entire stretch and length of road in front, abutting the building, is uniformly and throughout 20 feet in width. A copy of the order dated 10.05.2013 and 2.7.2013, passed by the learned Division Bench of this Court in CWJC No. 8152 of 2013 has been annexed to the counter affidavit filed by the respondents. It has been further stated in the



counter affidavit that in compliance of the directions issued by the learned Division Bench of this Court, different teams of Engineers were constituted by the order of the Commissioner, PMC, for taking measurement of the buildings / apartments under construction and on the basis of the reports submitted by the inspecting teams, vigilance cases were initiated against the builders / landholders / developers and notices were issued to them for filing show cause. In fact, one team had also visited the plot in question i.e. Plot No. 134/B situated at Srikrishna Puri, Patna where the building in question was being constructed and the inspecting team had submitted an enquiry report from which it has transpired that the plan map was sanctioned by an Architect, namely, Sri Rakesh Ranjan Raje, having registration no. 29/09 through Plan Case No. RAJE/S.K. Puri/RES/LB+UB+G+5/ PMC/07/2012 dated 02.05.2012 and on the basis thereof, the construction of the building in question was being carried out. The report also reveals that no objection certificate had been issued for construction of a residential house vide letter no. 5021 dated 21.12.2011, however, the construction in question was being done in flagrant violation of the building bye-laws as well as in contravention of the terms and conditions of the deed of lease of the plot in question, thus a Vigilance Case bearing Vigilance Case No. 97A/ 2013 was initiated and a show cause notice was issued to the petitioner on



28.09.2013 whereafter, the petitioner had filed his reply as also written notes of arguments. It has also been submitted that though the petitioner had submitted copies of possession letter, planning report, lease deed, mutation order, no objection certificate and a copy of the sanctioned plan, however, no information was provided with regard to the development agreement entered into with the builder. Nonetheless, the respondents had gathered information from the registry office, Patna that the petitioner has executed a development agreement with the builder, namely, Maa Shambhabi Engicon Pvt. Ltd., vide a registered deed of agreement dated 01.03.2013, however, the petitioner had deliberately concealed the same. It is the case of the respondents that from the said development agreement, it is apparent that the builder / developer has 50% share in the building under construction and the landowner (lessee) has 50% share in the multi-storied residential-cum-commercial building and in the said development agreement, there is a provision for construction of a show room as well. Thus, it has been submitted that malafides on the part of the petitioner as well as on the part of the builder is evident inasmuch as despite a notice having been affixed on the under construction building in question, the builder has chosen not to appear in the vigilance case and has deliberately concealed his identity from the vigilance court. It is also the



case of the respondents that the petitioner never got approval of the lessor in writing, regarding the plans and specification of the construction in question as per the deed of lease but still construction of a multi storied residential cum commercial building had been started, on the basis of a registered development agreement between the petitioner and the builder, on the plot in question, in flagrant violation of the terms and conditions of the deed of lease. It is stated that the sanctioned plan in question was never approved by the PMC and even after, issuance of the so-called no objection certificate dated 21.12.2011, the Estate Officer, PMC, by his letters dated 15.6.2012, 27.6.2012 and 10.10.2012 had issued notices to the petitioner to submit his show cause reply as also for hearing the petitioner on the issue of no objection certificate, in view of the fact that although the sanctioned plan was with respect to a residential apartment, however, in the garb of residential apartment, a commercial cum residential apartment was being constructed on the plot in question, which was allotted to the petitioner by a deed of lease and the said lease had been granted for constructing a building, expressly for the purposes of residence. It is also submitted that a bare perusal of the order dated 28.11.2014 passed by the Municipal Commissioner, Patna Municipal Corporation, would show that the construction in question was being carried out in complete violation of the



Bihar Municipal Act, Building Bye-Laws and the terms and conditions of the deed of lease. As regards, no objection certificate dated 21.12.2011, it has been stated by the respondents that upon the petitioner having filed an application on 12.08.2011 before the PMC along with his affidavit for issuance of no objection certificate for construction of his house on the plot in question, the Commissioner, PMC, had permitted the petitioner to construct a residential building for the use of his family in terms of the provisions as contained in the Building Bye-laws as well as in accordance with the terms of the planning report, after getting the map approved by the authorized Architect in conformity with the conditions contained in the lease deed, however, the petitioner, without prior approval of the plan and specification of the proposed construction by the lessor in writing, got the construction done qua the building in question, in violation of Clause 5 of the lease deed. It is also alleged that the so-called plan map, which the petitioner is alleged to have got approved by the authorized Architect, namely, Rakesh Ranjan Raje, was never produced before the Commissioner, PMC, for the purposes of obtaining his previous approval in writing. It is also submitted that it would be evident from the plan map of the building in question that the construction proposed is regarding G+5 floors (two flats on each floor), which is in complete violation of the terms and



conditions of the lease deed, planning report, the order of the Commissioner, PMC granting NOC and the undertaking given by the petitioner in his various affidavits.

Facts of the Case (CWJC No. 2432 of 2017)

11. The writ petition bearing CWJC No. 2432 of 2017 (Smt. Arti Banerjee @ Arati Banerjee Vs. PMC & Ors.) has been filed, inter-alia praying therein to set aside the order dated 28.12.2016 passed in Appeal Case No. 28 of 2014 by the Municipal Building Tribunal, Patna Division, Patna as also for setting aside the order dated 16.07.2014 passed in Vigilance Case No. 118A of 2013. The petitioner has further prayed for restoration of the possession of the building in question back to the lessee by removing the seal and locks therefrom as also for restoring status quo ante.

12. The brief facts of the case are that the husband of the petitioner, late Debanshu Banerjee, was vested with the property in question i.e. Plot No. 215, Type-A, Thana No. 7, situated at Mohalla-South Shri Krishna Puri, ad-measuring 6092.91 sq. feet, by a lease deed executed in between the Patna Improvement Trust and the husband of the petitioner for 99 years with effect from 16.10.1966, the terms and conditions whereof being same and similar to the lease deed dated 16.6.1966, as executed in the first case. The husband of the petitioner had then come into actual physical possession of the said land in question and after his death, the same was inherited by his wife i.e. the



petitioner herein, in whose name, the property was subsequently mutated / transferred for the remaining period of the lease. In the year 2011-12, the petitioner had decided to reconstruct the building over the plot in question inasmuch as the previous construction had become old and unsafe, hence had applied for planning report and the same was issued vide memo no. 4633 dated 3.6.2011. Thereafter, the petitioner had applied for issuance of a no objection certificate on 30.07.2011, which was accordingly issued vide letter no. 5022 dated 21.12.2011 and is more or less similar to the one issued in the first case on 21.12.2011. A plan of the proposed building is then stated to have been prepared and submitted by the empanelled / registered and certified Architect of the Corporation, namely, Sri Rakesh Ranjan on 19.1.2012 vide Plan Case No. CA/86/9665/29/ 2009-10/PMC-34/2011. In the meantime, the petitioner had entered into a development agreement with Maa Shambhavi Engicon Pvt. Ltd. for construction of a residential building as per the approved and sanctioned building plan over the plot in question. While, the construction was going on, all of a sudden, a letter dated 15.6.2012 was served upon the petitioner and the petitioner was directed to file an affidavit in the format furnished by the Corporation within seven days along with the relevant papers, which was duly replied by the petitioner on 26.06.2012. Thereafter, a letter dated



15.06.2013 was served on the petitioner by the Executive Officer of the Corporation, asking the petitioner to file a show cause and produce the relevant documents in view of the order dated 10.05.2013 passed by the learned Division Bench of this Court in CWJC No. 8152 of 2013 as also alleging therein that the construction was not in accordance with the building bye-laws, whereafter, the petitioner had filed all the relevant documents before the authority on 28.06.2013. Nonetheless, an order dated 01.10.2013 was communicated to the petitioner, issued by the Commissioner, PMC, whereby and whereunder the petitioner was directed to stop the construction work of the building in question since the same was in violation of Sections 313, 315 and 325 of the Bihar Municipal Act, 2007. It was also alleged that the terms and conditions of the lease deed has been violated. Thereafter, a Vigilance Case No. 118A of 2013 was initiated and the petitioner was directed to file show cause reply, which was duly filed on 15.10.2013, nonetheless, the learned Commissioner, by the impugned order dated 16.7.2014, has directed for resuming the possession of the land in question along with the under construction building thereon and has issued other directions, which are more or less similar to the ones issued in the first case vide order dated 28.11.2014. The petitioner had then filed an appeal before the Municipal Building Tribunal, which was registered as Appeal Case No. 28 of



2014, however, the same has been dismissed with an observation that the Municipal Building Tribunal has got no jurisdiction to decide the issue as to whether the resumption of the leased property in question has been rightly resumed by the Municipal Commissioner, PMC, or not.

13. The respondents have also filed a counter affidavit in the present case, inter alia stating therein that the aforesaid plot no. 215/A was allotted vide letter dated 29.9.1966 for a period of 99 years on lease in the name of Sri Divyanshu Banerjee by the then Patna Improvement Trust and the lease was executed on 19.10.1966. After the death of the original allottee, the land and the building was transferred in the name of the petitioner vide order dated 24.5.2011. It is also stated that upon a request made by the petitioner as also on the basis of the documents made available by her, a no objection certificate was issued by the Corporation in accordance with the building bye-laws for construction of a building for family use and occupation, however, subsequently, upon a survey having been conducted, it was found that the construction was being carried out at the said plot no. 215/A, contrary to the provisions of the lease deed, Land Disposal Rules, hence, letters dated 15.6.2012 and 27.6.2012 were issued, asking for the relevant documents from the petitioner. Thereafter, an inspection team had measured the apartment under



construction over the plot in question on 26.9.2013, which was found to be G+6 and it was also discovered that the said construction was being made in complete violation of the rules and regulations as well as in contravention of the terms and conditions of the lease deed. Thus, a Vigilance Case No. 118A /2013 was initiated and the petitioner was served with a show cause notice whereupon the petitioner had appeared and filed her reply and then the final order dated 16.7.2014 was passed by the Municipal Commissioner, directing for resumption of the plot in question. The petitioner had then filed an appeal, however, the same has been dismissed by the Municipal Building Tribunal. It has been further stated that the petitioner has carried out illegal construction work in a residential area in complete violation of the terms and conditions of the lease deed as also in violation of the building bye-laws and the no objection certificate granted to her, hence, action for cancellation of the allotment, lease deed and resumption of the plot in question has been taken, after affording proper opportunity of hearing to the petitioner herein.

Facts of the Case (CWJC No. 10975 of 2017, Gajendra Mohan Mishra and Ors. Vs. PMC & Ors.)

14. The present writ petition has been filed by the petitioners for quashing the order dated 01.08.2014 passed by the Municipal Commissioner, Municipal Corporation, Patna in Vigilance Case No. 99A of 2013, as also for setting



aside the consequential directions passed by him, including the order of resumption, sealing and taking over of possession of the building situated at Plot No. 165B, S. K. Puri, Patna. The petitioners have also prayed for quashing the order dated 1.3.2017 passed by the Municipal Building Tribunal, Patna Division, Patna, in Appeal No. 68 of 2014 (arising out of Vigilance Case No. 99A of 2013) whereby and whereunder the appeal has been dismissed. Lastly, the petitioners have prayed for award of exemplary cost on account of the illegal deprivation of the petitioners from the use and enjoyment of their property as also causing loss and damages to them.

15. The brief facts of the case are that late Justice Gobind Mohan Mishra, was allotted plot no. 165 at Mohalla- Sri Krishna Puri, Type-B, ad-measuring 784.56 sq. yards, in accordance with the provisions of the Patna Improvement Trust (Disposal of Land) Rules, 1957 and the said land was settled in his favour for a period of 99 years on lease by the erstwhile Board of Trustees of Patna Improvement Trust by a registered lease deed dated 20.02.1967 and the possession was handed over to him on 28.04.1967. The terms and conditions of the said lease dated 20.02.1967 are same and similar to the lease dated 16.6.1966, as executed in the first case, as aforesaid. In the year 1980, the PRDA had offered an additional area of 1406 sq. feet (156.22 sq. yards), lying contiguous east to the demised



premises, to the father of the petitioners, which was allotted vide letter dated 16.06.1980, and the consideration money thereof was also paid, whereafter the said additional area was also settled in favor of the father of the petitioners, duly communicated vide letter dated 25.8.1980. After the settlement of the additional area with the lessee, a modified building plan was submitted by the lessee on 24.06.1980, which was processed vide Case No. 537 of 1980 and the then Vice Chairman of the PRDA had granted sanction on 01.08.1980. The said building plan, which was sanctioned by the PRDA, consisted of the original allotted area of 785.36 sq. yards plus the area of 1406 sq. feet, allotted later on. After three years, when the aforesaid sanction plan dated 1.8.1980 had expired, the same was submitted for revalidation and the map was revalidated on 16.02.1984 by the then Vice Chairman, PRDA, Patna, thus, the original lessee became owner of 8591.4 sq. feet of land. Subsequently, the original lessee died on 29.11.1994 and his wife also died on 8.7.2005, leading to the petitioners herein (three sons of the original lessee), filing a joint application before the respondent authorities for substitution and mutation of their names in place of their deceased father. The names of three petitioners were subsequently mutated by the respondent Municipality, after grant of approval by the Municipal Commissioner.



16. It is the further case of the petitioners that during the course of time, a proposal was mooted for declaring 300 meters wide stretch, which had been earlier declared as residential area, as commercial area and accordingly, in the 5th meeting of the Board of Enquiry constituted under the Chairmanship of the Vice-Chairman of PRDA, held on 15.12.2006, a decision was taken to declare 300 feet stretch of land on the Boring Road, facing M2 type buildings, as a commercial area and the said decision was duly notified on 15.12.2006 with a decision to incorporate necessary corrections in the lease deeds of the affected lessee. Thereafter, Patna Municipal Corporation vide memo dated 20.12.2007 had resolved to follow the existing bye-laws for sanction of residential / commercial buildings in Rajendra Nagar and S. K. Puri area and in Appendix-M of the then existing building bye-laws, it has been provided that under special circumstances, plan for commercial building can be sanctioned on a residential plot. It is the further case of the petitioners that after declaration of 300 feet wide stretch on Boring Road as commercial area as well as upon mutation of the names of the petitioners in place of the original lessee, the petitioners decided to construct a commercial complex over the vacant portion of their land, which was in addition to the pre-existing residential portion, comprising of three flats as also they further decided to construct additional flats on the pre-



existing residential portion by constructing three additional residential flats for residential purposes. Accordingly, a combined modified building plan, containing provision for construction of commercial portion in the vacant portion and for construction of additional flats on the existing residential portion, was prepared by the authorized Engineer / Architect of the builder and was submitted by the builder / developer for approval and sanction with the Municipal authorities and the same was received and registered as Building Plan Case No. P/S.K Puri/ P.C. No./B+G+6-537 of 1980. The said plan was duly enquired into and verified, whereafter sanction was accorded by the then Commissioner, Patna Municipal Corporation, on 30.04.2009. In fact, the Fire Officer, Bihar, Patna had also given its no objection certificate dated 08.06.2009. After sanction of the aforesaid modified building plan, the petitioners had entered into a development agreement with M/s Apurna Developers Pvt. Ltd. (hereinafter referred to as "the Builder") on 07.06.2010, vide a registered deed for the purposes of construction of commercial complex as also for construction of additional residential flats on the pre-existing residential portion. In fact, the builder had then completed the construction work of commercial portion on the ground floor, 1st floor and 2nd floor, apart from completing the outer structure from 3rd to 6th floor, whereafter, the developer, after negotiation with the HDFC



Bank, had approached the petitioners for signing a lease agreement with the HDFC Bank Ltd. The petitioners along with the developer had then entered into an agreement on 16.1.2013 with the HDFC Bank for leasing out the ground and 1st floor of the commercial complex and the Bank had then taken possession of the leased premises i.e the ground and 1st floor of the plot in question as also had posted their security personnel to guard the leasehold premises. Thereafter, the residential portion and commercial portion of the building in question, falling in the share of the petitioners, were also assessed to tax by the Patna Municipal Corporation and tax receipts were also issued, after approval was granted by the then Patna Municipal Commissioner on 08.09.2012. It is only then that one Narendra Mishra had filed a PIL before this Court on 11.04.2013 bearing CWJC No. 8152 of 2013 and a learned Division Bench of this Court by an order dated 10.05.2013 had issued directions to the Corporation and the Registrar, Cooperative Society to ensure that no new commercial construction or commercial / non-residential activity is allowed to be started afresh on a residential plot in view of Sections 338 and 342 of the Act. Thereafter, a list of multi storied buildings were prepared, inspections were held and the property in question was also included in the said list, whereafter the inspection team had conducted ex-parte inspection of the building / plot in question and had



submitted an ex-parte report on 24.9.2013. On the basis of the said ex parte report, Vigilance Case No. 99A of 2013 was started and a show cause notice dated 28.9.2013 was issued to the petitioners, asking them as well as the builder to show cause as to why the lease itself be not cancelled and the building standing thereon be not taken into possession by the Patna Municipal Corporation, after demolishing the alleged unauthorized construction. The petitioners had then filed a reply to the said show cause notice on 17.10.2013, apart from filing a second reply on 14.11.2013. The petitioners had also filed supplementary reply cum written submissions, whereafter the learned Commissioner had passed the final impugned order dated 01.08.2014, directing for resumption of the plot and building in question, apart from issuing other directions, which are more or less similar to the directions issued vide the Order dated 28.11.2014, passed in the first case. The petitioners had then filed an appeal before the Municipal Building Tribunal, Patna, bearing Appeal Case No. 68 of 2014 and the builder had also preferred an appeal bearing Appeal No. 46 of 2014. The HDFC Bank had also filed an appeal bearing Appeal No. 82 of 2014. Finally, the appeal filed by the petitioners bearing Appeal No. 68 of 2014 was dismissed by the Municipal Building Tribunal by the impugned order dated 01.03.2017 on the ground that the appeal is not maintainable inasmuch as the Tribunal has got



no jurisdiction to decide the issue as to whether the resumption of the leased property in question by the Municipal Commissioner, Patna Municipal Corporation, is justified or not.

The petitioners have also brought on record copy of the note-sheets containing the recommendation and sanction of the then Commissioner dated 30.04.2009 qua the modified building plan.

17. The Respondent-Patna Municipal Corporation has also filed a counter affidavit in the present case, inter alia stating therein that a total area of 784.56 sq. yards was allotted to the father of the petitioners, but construction has been made on 798.45 sq. yards, which is more than the allotted land, hence, Clause 6 of the lease deed has been violated by the petitioners, which is also clear from the enquiry report as well as the impugned order dated 01.08.2014, passed by the Municipal Commissioner, PMC. The enquiry report clearly shows that upon inspection of the allotted land, it has been found that the area of road has also been included in the land in question deliberately for which the petitioners were not authorized. It is also submitted that according to the building bye-laws, application for revision or modification of a map has to be made within three years and adding a further extended period of two years for the purposes of revalidation, a maximum time period of five years is permissible for



revalidation of the old map, however after lapse of five years, only a new map can be approved, but in the present case, the petitioners had submitted application for revision of map in the year, 2009 i.e. after lapse of 24 years, hence, the same could not have been accepted. It is also denied that a revised map was issued on 24.2.2010. The respondents have submitted that even if the validity of revised map is taken to be correct, the same stood lapsed on 29.04.2012, but the petitioners did not stop the construction work resulting in violating the law in force. It is also submitted that the opening of the HDFC Bank was done on 03.07.2013 and the connection from the electricity department was taken by the Bank on 05.07.2013, however, prior to the said dates, the learned Division Bench of this Court had already passed the aforesaid order dated 10.05.2013 in a PIL matter being CWJC No. 8152 of 2013. It is also submitted that the revised map dt. 24.02.2010 is false and fabricated. Lastly, it is submitted that the answering respondents have the power to re-enter and résumé possession as has also been authorized and confirmed by this Hon'ble Court vide judgment dated 23.06.2015 passed in CWJC No. 8152 of 2013.

Facts of the Case (CWJC No. 7404 of 2017)

18. The present writ petition has been filed on behalf of the builder, namely, M/s Apurna Developers India Pvt. Ltd. through its proprietor, namely, Prakash Kumar, challenging



the order dated 01.08.2014 passed by the Municipal Commissioner, Patna Municipal Corporation, Patna in Vigilance Case No. 99A of 2013 and the order dated 02.03.2017 passed by the Chairman of the Municipal Building Tribunal, Patna in Appeal Case No. 46 of 2014 whereby and whereunder the appeal has been dismissed.

19. The brief facts of the case as narrated in the present writ petition are almost same and similar to the facts narrated in the aforesaid writ petition bearing CWJC No. 10975 of 2017, inasmuch as both the aforesaid writ petitions pertain to the same plot no. 165 at Mohalla- Sri Krishna Puri, Type-B and the only difference is that the present writ petition has been filed by the builder whereas the aforesaid writ petition i.e CWJC No. 10975 of 2017, has been filed by the owners of the plot in question, hence, the facts are not being repeated. Similarly, the counter affidavit filed on behalf of the respondents is also more or less similar to the one filed in the aforesaid writ petition bearing CWJC No. 10975 of 2017, hence, are not being narrated herein in order to avoid repetition.

Contentions of the Ld. Senior Counsel for the petitioners in CWJC No. 10975 of 2017 (Gajendra Mohan Mishra & Ors. Vs. PMC & Ors.)

20. The lead argument in the aforesaid batch of writ petitions has been advanced by Sri Umesh Prasad Singh, Senior Advocate, duly assisted by Sri Nilanjan Chatterjee, Advocate, appearing in the aforesaid writ petition bearing



CWJC No. 10975 of 2017 (Gajendra Mohan Mishra & Ors. vs. The Patna Municipal Corporation & Ors.).

21. The learned Senior Counsel for the petitioners has referred to the Patna Improvement Trust (Disposal of Land) Rules, 1957 (herein after referred to as the "Rules 1957"), particularly Rule 19 thereof, which is reproduced herein below:-

“19. Transfer of land leased or sold by the Trust-
No plot or part thereof leased or sold by the Trust shall be transferred by sale or gift within a period of ten years from the date of lease or sale without the permission of the Trust.”

It is thus submitted that if the said Rule 19 of the Rules, 1957 is read with Clause 12 of the lease deed in question, it provides that except with the previous consent of the Trust, the lessee shall have no right within ten years of the date of the said lease to transfer by way of sale, exchange or otherwise the aforesaid plot including the structures constructed thereon or the right, title or interest therein, but no such consent shall be required in matters of gift in favour of an heir or relation or of Will in respect of the said properties. Thus it is apparent that only in cases of transfer by the lessee within ten years of the lease, prior permission of the authorities of the Trust is required.

22. It is further submitted that Rule 21 of the said Rules, 1957 further provides as follows:-

“21. Contravention of provisions of these Rules:-



(1) if any time subsequent to the execution of any deed of lease or sale, it is discovered that the lease or sale has been made in contravention of any of these Rules, the same shall be void and shall stand revoked.

(2) Any lease or sale, in respect of which there has been breach at any time after the execution of the deed of lease or sale of any terms or conditions laid down by the Trust, shall be liable to revocation at the option of the Trust.”

23. The learned Senior Counsel for the petitioners has submitted that from a conjoint reading of Rule 21 of the Rules, 1957 and Clause 15 of the lease deed in question, which stipulates that the Patna Improvement Trust shall have the right to re-enter and resume possession of leased premises only in case of breach of provisions set forth in Clauses 4, 5, 6 and 12 and that too after paying the compensation as determined by the Board of Trustees, it is apparent that the right of resumption and re-entry was available only to the Trust and that too, upon breach of the provisions contained in Clauses 4, 5, 6 and 12 of the lease deed, only after payment of compensation as was to be determined by the Board of Trustees.

24. The learned Senior Counsel for the petitioners has further submitted that long after expiry of 10 years period from the execution of the lease deed in question i.e. the one dated 20.02.1967, the Patna Regional Development Authority (Disposal of Land) Rules, 1978 were promulgated



in exercise of powers conferred under Clause 2(a) of Section 79 of the Bihar Regional Development Authority Second Ordinance, 1978, which was made an act in the year 1981, however, at that time, there was no assent of the president and the same came only vide notification dated 23.1.1982, thus, the said Rules, 1978 neither survived nor existed.

25. The learned Senior Counsel for the petitioners has also referred to Section 93(2)(i) of the Bihar Regional Development Authority Act, 1981, which is reproduced herein below:-

“all lands within the area notified under Section 1 held by any person as lessee from the Improvement Trust or Town Planning Authority under a registered deed or lease for residential purpose (and not for commercial purpose or commercial-cum-residential purpose) shall be deemed to be vested in him as perpetual leases from generation to generation on payment of fee to the Authority at the rate of one rupee per square meter.”

The learned Senior Counsel for the petitioners has thus submitted that any plot held by any person as lessee from the Improvement Trust under a registered deed of lease for residential purpose would be deemed to be vested in such person / lessee as a perpetual lease from generation to generation.

26. The learned Senior Counsel for the petitioners has



also submitted that the modified building plan was submitted by the lessee on 24.6.1980, which was processed vide Case No. 537 of 1980 and sanctioned by the then Vice Chancellor of the PRDA on 01.08.1980 and the said building plan consisted of original allotted area of 785.36 sq. yards plus the additional area allotted later on i.e. 1406 sq. feet. It is also submitted that since three years later, the sanction plan pertaining to Case No. 537 of 1980 dated 01.08.1980 had expired, the same was again submitted for revalidation and the map was revalidated on 16.02.1984 by the then Vice-Chairman, PRDA, Patna, hence, sanction having been accorded after due inspection of site by the Junior Engineer as well as by the Executive Engineer, as is borne out from the note dated 08.07.1980, no encroachment was found on either side of the road and the effect, in nutshell, was/is that the lessee became owner of 8591.4 sq. feet of land. In fact, record of the aforesaid Building Plan Case No. 537 of 1980 would also show that sanction was accorded after taking into consideration the additional area, allotted later. It is also the case of the petitioners that after the death of the original lessee on 29.11.1994 as also of his wife on 08.07.2005, joint application was filed by the petitioners for substitution and mutation of their names and after approval by the Municipal Commissioner, the correction slip was issued on 10.12.2008. It is also submitted that the petitioners have



been paying all the municipal taxes to the respondent authorities without fail.

27. The learned Senior Counsel for the petitioners has also referred to the decision taken by the Board of Enquiry constituted under the Chairmanship of the Vice-Chancellor of PRDA dated 15.12.2006 and the office order dated 20.12.2007 issued by the PMC whereby and whereunder the plots located at Rajendra Nagar and Srikrishna Puri can be accorded sanction for commercial purposes. The learned Senior Counsel for the petitioners has submitted that as far as the petitioners are concerned, they had submitted modified building plan, containing provisions for commercial portion as well for addition of residential accommodation and only after proper verification and enquiry, sanction was accorded by the then Commissioner, Patna Municipal Corporation on 30.04.2009. In fact clearance had also been granted by the Fire Officer and only then, the construction in question was commenced. In fact, the Patna Municipal Corporation authorities have also fixed holding tax separately for the commercial portion as also separately for the residential portion, falling within the share of the petitioners, whereafter, tax receipts were also issued by the Respondent- Corporation. It is also submitted by the learned Senior Counsel for the petitioners that only after a lapse of 43 years of the execution of the lease deed in question, at a time when there was/is no restriction on



transfer of the land in question / lease agreement and there is no need of any sanction to be accorded by the Trust or the successor authority, the petitioners had executed a development agreement with M/s Apurna Developers Pvt. Ltd on 07.06.2010. Thus it is submitted that in terms of Clause (g) of Section 111 read with Section 112 of the Transfer of Property Act, 1882, the Municipal Corporation would be deemed to have waived right if any vested in it for forfeiture of lease because they have accepted the holding Tax at the commercial rate from the petitioner.

28. As far as the order dated 10.05.2013 passed by a learned Division Bench of this Court in CWJC No. 8152 of 2013 is concerned, it has been submitted by the learned Senior Counsel for the petitioners that firstly, the petitioners were not parties to the said writ petition and secondly, the learned Division Bench of this Hon'ble Court had vide order dated 10.05.2013 directed the Respondents-Corporation and the Registrar Cooperative Society to ensure that no new commercial construction or commercial / non-residential activity is allowed to start afresh on a residential plot in view of Section 338 and 342 of the Act and the said order dated 10.05.2013 also included not only the proposed constructions but also the ongoing constructions, however, such commercial and non-residential constructions, which had already been occupied and were fully operational, were excluded from the purview



of the said order dated 10.05.2013. Thus, it is submitted by the learned Senior Counsel for the petitioners that since the ground floor, first floor and second floor of the commercial complex on the plot in question had already been completed and had been handed over and occupied by HDFC Bank under an indenture of lease dated 16.01.2013 i.e. prior to the aforesaid order dated 10.05.2013, the premises of the petitioners in question stood excluded from the aforesaid order dated 10.05.2013.

29. The learned Senior Counsel for the petitioners, now coming to the order dated 01.08.2014 passed in Vigilance Case No. 99A of 2013, has submitted that the Municipal Commissioner, PMC, has deliberately overlooked and omitted the relevant portion of the replies submitted by the petitioners as also the admitted existing position regarding allotment and settlement of the additional lands in favor of the petitioners in the year 1980 itself and has come to a perverse conclusion that the petitioners have encroached upon the lands of PRDA and reduced the width of the road from 90 feet to 80 feet. The learned Senior Counsel for the petitioners has submitted that even today, the building and the plot of the petitioners is in line with all other plots in the area and the road width is all along 80 feet. It is also submitted that since the building plan was sanctioned in the year 1980, by the then Vice Chairman, PRDA, the Municipal Commissioner has no jurisdiction / power to



review the same. It is also submitted that though in the impugned order dated 01.08.2014, the Municipal Commissioner has referred to certain paragraphs of the replies submitted by the petitioners to the show cause notice, however, the most important portion of the reply of the petitioners, as contained in paragraph nos. 5, 6, 10 and 11, has been omitted wherein the petitioners have referred to the letter dated 25.08.2010 of the Estate Officer with regard to the additional area, admeasuring 1406 sq. feet, as also have contended that only after due examination and spot inspection, holding tax was fixed by the competent authority of the Patna Municipal Corporation and two separate holding numbers were allotted i.e. 2976 and 2976A for the residential and commercial portion respectively and the holding tax has also been paid & accepted for the years 2012-13 and 2013-14.

30. As regards the alleged deviation and other deficiencies pointed out in the report submitted by the Vigilance Officer and consideration thereof in the impugned order dated 01.08.2014, the learned Senior Counsel for the petitioners has referred to Clause 7.1 of the bye-laws, which reads as follows:-

“7.1. Applications for development or re-development of land or erection, re-erection or making material alteration of the buildings shall be submitted to the Authority. The Authority shall verify the fact given in the application and



Annexure from technical, administrative and legal point of view. The title of land shall be verified. The Authority shall ensure that adequate guarantee has been obtained from the owner for carrying out the building activity as per specification prescribed (see Bye-laws no. 5.5). The Authority may either sanction or refuse the proposal or may sanction therewith such modifications or directions as it may deem necessary and thereupon shall communicate the decision to the owner as in proforma given in Appendix-E.”

It is thus submitted that it was incumbent on the respondent authorities to suggest amendment, modification and / or to reject the modified building plan but having not done so, the Municipal Commissioner by the impugned order dated 01.08.2014 could not have taken an adverse view of the matter.

31. The learned Senior Counsel for the petitioners has next submitted that the decision of the learned Municipal Commissioner, contained in the impugned order dated 01.08.2014, directing for resumption of the multi-storied partially constructed building and the plot in question, on the ground that the terms and conditions of the lease in question have been violated, is also illegal and contrary to law. In this regard, the learned Senior Counsel for the petitioners has submitted that the Patna Municipal Commissioner had issued a memo no. 1054 dated 20.12.2007 wherein it had been resolved that for sanction



of residential / commercial building in Rajendra Nagar and S. K. Puri area existing bye-laws will be followed and moreover, as per Appendix-M of the then existing building bye-laws, it had been stipulated that under special circumstances, plan for commercial building can be sanctioned on a residential plot, hence, it is submitted that there has been no violation of the lease conditions by using the premises for commercial purposes. It is also submitted that the possession of the plot in question can be resumed only in case of breach of any of the provisions set forth in Clauses 4, 5, 6 and 12 of the said lease deed in question. It is submitted that condition no. 4 and 5 of the lease deed in question stipulates construction of the building within a prescribed time after the execution of the lease and taking prior approval of the lesser whereas condition no. 6 postulates that the second party shall not permit any part of the building constructed on the aforesaid plot to be used for any purpose other than for which the lease has been granted including uses ancillary thereto. In this regard, the learned Senior Counsel for the petitioners has submitted that the said condition no. 6 has to be read with the said sanction accorded under the aforesaid Appendix-M and also in terms of the resolution of the PMC dated 20.12.2007, thus, though the commercial use of the plot in question is not allowed, however, since the petitioners were granted sanction for commercial use as per the modified / revised



map / building plan dated 30.04.2009, which continued till 01.08.2014, it cannot be said that by using the land for commercial purpose, the stipulations contained in the lease deed in question has been violated. It has been further submitted that the power of resumption or re-entry can be resorted to only by the Trust under the Patna Improvement Trust (Disposal of Land) Rules, 1957 and the successor of the Trust, however, the Municipal Commissioner under the Bihar Municipal Act, 2007 has not been vested with the power either to cancel the lease deed or the power of resumption / re-entry on the lease land in question, hence, resumption of the premises in question can only be done by the due process of law.

32. The learned Senior Counsel for the petitioners has further submitted that the power to order for resumption / re-entry as well as cancellation of the lease deed is not vested with the Municipal Commissioner, neither under the Land Disposal Rules, 1978 nor under the Land Disposal Rules, 1957 nor under the Bihar Municipal Act, 2007 nor under the stipulations of the lease deed in question inasmuch as it is only the empowered committee, which at best is vested with the power of cancellation of the lease and resumption of possession and that too, after providing appropriate compensation in case of violation of the terms and conditions of the lease deed, which, in any case, has not been violated by the petitioners herein.



33. The learned Senior Counsel for the petitioners has further submitted that the notice dated 28.09.2013 has been issued to the petitioners by the Municipal Commissioner for violation of Sections 313, 315 and 325 of the Bihar Municipal Act, 2007 and the petitioners have been noticed to submit their reply as to why their lease be not cancelled and the possession of the plot in question be not resumed. At this juncture, it would be apt to reproduce Sections 313 to 316 and 323 to 325 of the Bihar Municipal Act, 2007 herein below:-

“313. Prohibition of construction without sanction. - No person shall construct, or commence to construct, any building or any structure of a permanent nature or execute any of the work relating to construction of building including addition, alteration or modification of an existing building in any municipal area, save and except in accordance with building bye-law.

314. Sanction of building plan. - No persons shall construct or commence to construct, any building or structure of permanent nature or execute any work relating to construction of building undertake or any alteration addition or modification of an existing building unless, the building plan is approved by a certified Architect registered under Architects Act, 1972.

Provided that no Architect shall sanction any building plan unless it is in conformity with building bye-law framed by the State Government/Municipality.



Provided further that any Architect, who is found to have approved a building plan in contravention or in deviation of building bye-law, he shall be liable to be prosecuted and shall be liable to pay fine of Rupees fifty thousand or sentence to imprisonment for a period which may extend to one year or both.

315. Construction of building in contravention of building by-law. - Any building or structure of permanent nature which has been constructed or construction has commenced in contravention or breach or deviation of building by-law shall be liable to be demolished, notwithstanding that it may have been approved by a registered Architect.

Provided further that the owner or occupier or any person responsible for construction of a building or structure of permanent nature or commencement of construction in contravention, breach, or deviation of building by-law shall further be liable to pay a penalty of minimum of Rupees one lac, which may extend up to Rupees 10 lacs depending upon size of the building or structure and extent of deviation.

Provided further that the penalty under this Section shall be in addition to any other fine provided under this Act including fine for compounding as may be provided under building bye-law.

316. Building plan approved by registered Architect to be submitted to Chief Municipal Officer. - (1) Every registered Architect, who approves a building construction plan shall within



seven days from approving the plan submit detail of construction plan alongwith approval granted by him to the Chief Municipal Officer of the municipality.

(2) On receipt of approved building plan by registered Architect, the Chief Municipal Officer may inquire and verify and satisfy himself that the building construction plan confirms to building bye-law and other parameters required under this Act.

(3) If Chief Municipal officer, on such inquiry or verification finds that the building or structure of permanent nature construction plan has been approved by the registered Architect in contravention, breach or deviation of building bye-law or other parameters under this Act, he shall immediately stop construction work and proceed to take action against owner, occupier or any person responsible for construction of such building in contravention, breach or deviation of building bye-law and other parameter and shall also proceed to take action against registered Architect, who approved such building construction plan.

323. Order of demolition and stoppage of buildings or works in certain cases and appeal. - (1) Where the erection of any building or the execution of any work has been commenced, or is being carried on, or has been completed without, or contrary to, the sanction referred to in Section 314 or in contravention of any of the provisions of this Act or the Rules or the Regulations made thereunder, the Chief Municipal Officer may, in addition to any other action that may be taken under this Act, make an order directing that such erection or work shall be



demolished by the person at whose instance the erection or the work has been commenced or is being carried on or has been completed, within such period, not being less than five days and more than fifteen days from the date on which a copy of the order of demolition with a brief statement of the reasons therefor has been delivered to such person, as may be specified in the order:

Provided that no order of demolition shall be made unless such person has been given, by means of a notice served in such manner as the Chief Municipal Officer may think fit, an opportunity of showing cause why such order shall not be made:

Provided further that where the erection of any work has not been completed, the Chief Municipal Officer may, by the same order or by a separate order, whether made at the time of the issue of the notice under the first proviso or at any other time, direct such person to stop the erection of such building or the execution of such work until the expiry of the period within which an appeal against the order of demolition, if made, may be preferred under sub-section (3).

Explanation. - In this chapter, "the person at whose instance" shall mean the owner, or the occupier, or any other person who causes the erection of any building or the execution of any work, including alterations or additions, if any, to be done, or does it by himself.

(2) The Chief Municipal Officer may make an order under sub-section (1), notwithstanding the fact



that the assessment of such building has been made for the levy of the property tax on lands and buildings.

(3) Any person aggrieved by an order of the Chief Municipal Officer under sub-section (1) may, within thirty days from the date of the order, prefer an appeal against the order to the Municipal Building Tribunal appointed under Section 329.

(4) Where an appeal is preferred under sub-section (3) against an order under sub-section (1), the Municipal Building Tribunal may stay the enforcement of the order on such terms, if any, and for such period, as it may think fit:

Provided that where the erection of any building or the execution of any work has not been completed at the time of the order under sub-section (1), no order staying the enforcement of the order under that sub-section shall be made by the Municipal Building Tribunal unless a surety, sufficient in the opinion of that Tribunal, has been given by the appellant for not proceeding with such erection or work pending the disposal of the appeal.

(5) Save as provided in this Section, no Court shall entertain any suit, application or other proceeding for injunction or other relief against the Chief Municipal Officer to restrain him from taking any action, or making any order, in pursuance of the provisions of this Section.

(6) Every order made by the Municipal Building Tribunal on appeal and, subject to such order, every order made by the Chief Municipal Officer under sub-section (1), shall be final and conclusive.



(7) Where no appeal has been preferred against an order made by the Chief Municipal Officer under sub-section (1) or where an order under that sub-section has been confirmed on appeal, whether with or without modification, the person against whom the order has been made shall comply with the order within the period specified therein or, as the case may be, within the period, if any, fixed by the Municipal Building Tribunal on appeal, and, on the failure of such person to comply with the order within such period, the Chief Municipal Officer may himself cause the building or the work to which the order relates to be demolished, and the expenses of such demolition shall be recoverable from such person as an arrear of tax under this Act.

(8) Notwithstanding anything contained in this Chapter, if the Empowered Standing Committee is of the opinion that immediate action is called for in relation to a building or a work being carried on in contravention of the provisions of this Act, it may for reasons to be recorded in writing, cause such building or work to be demolished forthwith.

324. Order of stoppage of building or work in certain cases. - (1) Where the demolition of any building or the erection of any building or the execution of any work has been commenced or is being carried on without, or contrary to, the sanction referred to in Section 314 or in contravention of any condition subject to which such sanction has been accorded or in contravention of any provisions of this Act or the Rules or the Regulations made thereunder, the Chief Municipal Officer may, in addition to any other action that may be taken under this Act, by



order, require the person at whose instance the building or the work has been commenced or is being carried on to stop the same forthwith.

(2) (a) Notwithstanding anything contained elsewhere in this Act or in any Rules or Regulations made thereunder, no owner of any building, and no person engaged in the construction of any building on behalf of the owner thereof, shall allow storage or stagnation of water in the site for the construction of such building and every such owner or every such person, as the case may be, shall completely empty all collections of such water at least once in a week.

(b) Where the construction of a building is carried on in contravention of the provisions of clause (a), the Chief Municipal Officer may, in addition to any other action that may be taken under this Act, by order, in writing, require the person at whose instance such storage or stagnation of water in the site for the construction of the building is made, to stop forthwith any further construction of the building, and such order shall remain in force till the person as aforesaid complies with the requirements of the order as aforesaid, to the satisfaction of the Chief Municipal Officer.

(3) If an order by the Chief Municipal Officer under clause (b) of sub-section (2) directing any person to stop the construction of any building is not complied with, the Chief Municipal Officer may take such measures as he deems fit or may require any police officer to remove such person and all his assistants and workmen from the premises within such time as may be specified by the Chief Municipal Officer, and such police officer shall



comply with such requirement.

(4) If an order by the Chief Municipal Officer under Section 323 or under subsection (1) of this Section, directing any person to stop the erection of any building or the execution of any work, is not complied with, the Chief Municipal Officer may take such measures as he deems fit or may require any police officer to remove such person and all his assistants and workmen from the premises within such time as may be specified by the Chief Municipal Officer, and such police officer shall comply with such requirements.

(5) No Court shall entertain any suit, application or other proceeding for injunction or other relief against the Chief Municipal Officer to restrain him from taking any action or making any order in pursuance of the provisions of this Section.

(6) On the compliance with the requirement under sub-section (5), the Chief Municipal Officer may, if he thinks fit, depute, by an order, in writing, a police officer or an officer or other employee of the Municipality to watch the premises in order to ensure that the erection of the building or the execution of the work is not continued.

(7) Where a police officer or an officer or other employee of the Municipality has been deputed under sub-section (6) to watch the premises, the cost of such deputation, to be determined by the Municipality by Regulations, shall be paid by the person at whose instance such erection or execution is being continued or to whom notice under sub-section (1) has been given, and shall be recoverable from such person as an arrear of tax



under this Act.

325. Construction of building in contravention of the provisions of the Act or the Rules made there under:-

(1) Notwithstanding anything contained in this Act or the rules made thereunder or in any other law for the time being in force, any person, who, being responsible, by himself or by any other person on his behalf, so constructs, or attempts, or conspires, to so construct, any new building or additional floor or floors of any building, in contravention of the provisions of this Act or the Rules made thereunder, and endangers, or is likely to endanger, human life, or any property of the Municipality, whereupon the water-supply, drainage or sewerage or the road traffic is disrupted or is likely to be disrupted or is likely to cause a fire hazard, shall be punishable with imprisonment of either description for a term which may extend to five years and also with fine which may extend to fifty thousand rupees.

Explanation. - "Person" shall include an owner, occupier, lessee, mortgagee, consultant, promoter or financier, or a servant or agent of an owner, occupier, lessee, mortgagee, consultant, promoter or financier, who supervises, or causes the construction of, any new building or additional floor or floors of any building as aforesaid.

(2) The offence under sub-section (1) shall be cognizable and non-bailable within the meaning of the Code of Criminal Procedure, 1973.

(3) Where an offence under sub-section (1) has been committed by a Company, the provisions of



Section 438 shall apply to such Company.

Explanation. - "Company" shall have the same meaning as in the Explanation to Section 438."

Thus, the learned Senior counsel for the petitioners has submitted that the Municipal Commissioner, PMC, has got no jurisdiction to cancel the lease deed as is apparent from the aforesaid provisions of the Bihar Municipal Act, 2007.

34. The learned Senior Counsel for the petitioners has further submitted that by virtue of Section 488 of the Bihar Municipal Act, 2007, the Bihar Municipal Act, 1922, Patna Municipal Corporation Act, 1951, Bihar Municipal Corporation Act, 1978, Bihar Regional Development Authority Act, 1981, the Bihar Town Planning and Improvement Trust Act, 1951, Bihar Restrictions of Uses of Land Act, 1948 and the Bihar Municipal Ordinance, 2007 have been repealed, as such, the learned Municipal Commissioner has erred by invoking power conferred upon him under Section 38 of the Bihar Regional Development Authority Act, 1981 for the purposes of withdrawing the sanction of the building plan in question. The learned Senior Counsel for the petitioners has also submitted that by virtue of Section 93(2)(i) of the Bihar Regional Development Authority Act, 1974, the lease deed has been made perpetual by the force of law, hence, Clause 12 of the lease deed in question has stood void, as such, the lease in



question can only be resumed by taking recourse to appropriate remedies available before the learned civil court.

35. The learned Senior Counsel for the petitioners has also referred to Section 103 and 104 of the Bihar Municipal Act, 2007, which are reproduced herein below:-

“103. Special provisions for acquisition of lands adjoining streets. - Whenever the Municipality makes a request to the State Government for acquisition of land for the purpose of widening or improving an existing street, it shall be lawful for the Municipality to apply to the State Government for the acquisition of such additional land immediately adjoining the land to be occupied by such new street or existing street as is required for the sites of buildings to be erected on either side of the street, and such additional land shall be deemed to be required for the purposes of this Act.

104. Disposal of property. - Any property belonging to the Municipality may be disposed of with the prior approval of the State Government in the manner hereinafter provided, namely:-

(a) the Empowered Standing Committee may sell, or grant lease of, or otherwise dispose of, by public auction, any movable property, and may grant lease of, or let out on hire, any immovable property, belonging to the Municipality,

(b) the Municipality may, with the prior approval of the State Government, for valuable consideration, sell or otherwise transfer, any immovable property belonging to the Municipality which is not required



for carrying out the purposes of this Act, and

(c) the Municipality shall not transfer any immovable property vested in it by virtue of this Act, but shall cause the same to be maintained, controlled and regulated in accordance with the provisions of this Act and the Rules and the Regulations made there under:

Provided that the State Government may authorize, in the public interest, the disposal of such immovable property by the Municipality, if the Municipality so requires, for reasons to be recorded in writing.

Explanation. - "Valuable consideration" shall, in relation to any immovable property, mean anything of considerable value in terms of money or property given in lieu of transfer, by way of sale or otherwise, of such immovable property.

The learned Senior Counsel has thus submitted that under the Bihar Municipal Act, 2007, the Municipal Commissioner has got no power to cancel the lease deed in question and at best, the said power is only vested with the empowered standing committee.

36. It is also submitted that the findings arrived at by the Municipal Commissioner in the impugned order dated 01.08.2014 is based on no evidence and moreover the said Order dated 01.08.2014 has been passed in violation of the principles of natural justice inasmuch as the petitioners



have neither been supplied with the copy of the report of the enquiry Jachdal no. 2 with regard to the construction work on plot no. 165B, Sri krishna Puri, Patna nor with the details about the information gathered by the Executive Officer, Nutan Rajdhani Anchal and instead the same has been used against the petitioners without them being supplied with a copy of the same resulting in violating of the principles of natural justice.

37. The learned Senior Counsel for the petitioners has further submitted that the Patna Improvement Trust (Disposal of Land) Rules, 1957 have not been repealed till date, hence, the PRDA (Disposal of Land), Rules 1978 have never come into force. It is also submitted that since the Bihar Regional Development Authority Act, 1974 came into force only with effect from 25.01.1982 i.e. after grant of presidential assent, consequently, the Patna Regional Development Authority (Disposal of Land), Rules, 1978 could not have been framed in the year 1978 in exercise of powers conferred by Clause 2(a) of Section 79 of the Bihar Regional Development Authority Act, 1974. It is also clear from Section 484 of the Bihar Municipal Act, 2007 that the Patna Improvement Trust (Disposal of Land) Rules, 1957 have not been repealed. It is also submitted that the Municipal Commissioner is only empowered to pass orders in relation to matters stipulated under Chapter XXXVI of the Bihar Municipal Act, 2007 and the same does not vest the



Municipal Commissioner with the power to cancel the lease deed in question, hence, the order dated 01.08.2014 passed by the Municipal Commissioner is de hors the provisions of law and non-est in the eyes of law. Thus, it is submitted that the impugned order dated 1.8.2014 has been passed by the Municipal Commissioner by applying wrong provisions of law i.e. the Rules, 1978 as also Section 38 of the repealed Act, hence, the same depicts non-application of mind as also is malicious in law, thus, the impugned order dated 01.08.2014 is deemed to be set aside. It is further submitted that the power of resumption or re-entry could be resorted to only by the Trust under the Rules, 1957 as also by the successor of the Trust, but the Municipal Commissioner under the Act, 2007 has not been vested with either the power to cancel or the power of resumption.

38. The learned Senior Counsel for the petitioners has referred to a decision reported in 1988 PLJR 140, para 22 whereof is reproduced herein below:-

“22. It is now well settled that a statutory functionary must exercise its statutory function within the four corners of the statute. It is also well settled that where statutory functionary has to exercise its power in a particular way such power has to be exercised in the manner prescribed or not at all.

Placing reliance on the decisions reported in 1983 PLJR 266 it has been further held “if there



is violation of principles of natural justice the defect cannot be cured even by giving opportunity by the appellate authority or by the revisional authority.”

39. The learned Senior Counsel for the petitioners has next submitted that in the impugned order dated 01.08.2014, the Municipal Commissioner has come to a finding that on 24.02.2010, no map was issued and moreover, the said modified building plan, as revalidated vide order dated 30.04.2009, is forged, which is not correct inasmuch as neither the report nor the deposition of the Assistant In-charge of the record section was supplied to the petitioners nor they were granted opportunity to cross-examine the witnesses, hence, the said findings arrived at by the Municipal Commissioner is not sustainable in the eyes of law.

In nutshell, the Ld. Senior Counsel has submitted that the right of resumption and re-entry has never been vested either with the Commissioner or even with the PMC according to the provisions of the lease as also as per the Patna Improvement Trust (Disposal of Land) Rules, 1957 and by virtue of the provisions contained in the lease deed, after expiry of 10 years, a vested right has accrued to the lessee and moreover the right of resumption and re-entry vests only with the Trust, as such, at best only the duly constituted Empowered Standing Committee, under the Rules / Regulations framed as per the Bihar Municipal Act,



2007, can be treated as a successor to the Trust for the purposes of re-entry and resumption and that too only with regard to the land which has not been vested in the lessee in perpetuity by virtue of Section 93(2)(i) of the Bihar Regional Development Authority Act, 1974. Lastly, it is submitted that the power of resumption / re-entry, either under the provisions of the transfer of property act or even otherwise has to be in accordance with law. In this connection, the learned Senior Counsel for the petitioners has referred to a judgment rendered by the Hon'ble Apex Court, reported in (1989) 2 SCC 505 (State of U.P. v. Maharaja Dharmander Prasad Singh), paragraph Nos. 30 and 31 whereof are reproduced herein below:-

"30. A lessor, with the best of title, has no right to resume possession extra-judicially by use of force, from a lessee, even after the expiry or earlier termination of the lease by forfeiture or otherwise. The use of the expression "re-entry" in the lease deed does not authorise extra-judicial methods to resume possession. Under law, the possession of a lessee, even after the expiry or its earlier termination is juridical possession and forcible dispossession is prohibited; a lessee cannot be dispossessed otherwise than in due course of law. In the present case, the fact that the lessor is the State does not place it in any higher or better position. On the contrary, it is under an additional inhibition stemming from the requirement that all actions of Government and governmental authorities should have a "legal pedigree". In *Bishan Das v. State of Punjab* [AIR 1961



SC 1570 : (1962) 2 SCR 69] this Court said: (SCR pp. 79-80)

“We must, therefore, repel the argument based on the contention that the petitioners were trespassers and could be removed by an executive order. The argument is not only specious but highly dangerous by reason of its implications and impact on law and order ...

Before we part with this case, we feel it our duty to say that the executive action taken in this case by the State and its officers is destructive of the basic principle of the rule of law.”

31. Therefore, there is no question in the present case of the Government thinking of appropriating to itself an extra-judicial right of re-entry. Possession can be resumed by Government only in a manner known to or recognised by law. It cannot resume possession otherwise than in accordance with law. Government is, accordingly, prohibited from taking possession otherwise than in due course of law."

40. As far as the appellate order dated 01.03.2017 is concerned, the learned Senior Counsel for the petitioners has submitted that the learned Municipal Building Tribunal, in the impugned order dated 01.03.2017, has itself specifically stated that it has got no jurisdiction in the matter with regard to cancellation of the lease, resumption and re-entry. In such view of the matter, it is submitted that if the appellate authority is not vested with the power, as aforesaid, the Municipal Commissioner being a subordinate



authority can obviously not possess such power.

Contentions of the Ld. Senior Counsel for the petitioner in CWJC No. 7404 of 2017 (Prakash Kumar Vs. PMC & Ors.)

41. The learned counsel for the petitioner, Sri Chitranjan Sinha, Senior Advocate, has submitted that since the subject matter of the present case and the aforesaid writ petition bearing CWJC No. 10975 of 2017 is the same inasmuch as both the writ petitions pertain to Plot No 165B, Sri Krishnapuri and the only difference is that while the petitioners in CWJC No. 10975 of 2017 are the owners of the said plot in question, the petitioner of the present case is the builder/developer of the plot in question, the petitioner of the present case seeks to adopt the arguments advanced by the learned Senior Counsel, Sri Umesh Prasad Singh, in CWJC No. 10975 of 2017. The learned Senior Counsel for the petitioner has, nonetheless, submitted that Clause 15 of the lease in question clearly stipulates that Patna Improvement Trust shall have the right to re-enter and resume the possession of the plot in cases of breach of any of the provisions of the Patna Improvement Trust (Disposal of Land) Rules, 1957 as well as in cases of breach of the provisions of the lease and as per Rule 21(2) of the said Rules 1957, only the Trust of Patna Improvement Trust has the power to resume the possession of land and not the Chairman of the Patna Improvement Trust,



therefore, as on day, since the Patna Municipal Corporation has stepped into the shoes of the Trust of Patna Improvement Trust, only the Patna Municipal Corporation has the power to resume the land in question and not the Commissioner, Patna Municipal Corporation. It is also submitted that as per Clause 3 of the lease in question, the lease has been granted by the Patna Improvement Trust, subject to strict observance of the provisions of the Patna Improvement Trust (Disposal of Land) Rules, 1957 by the lessee, however, by the impugned order, the Commissioner, Patna Municipal Corporation, has invoked the provisions of Patna Regional Development Authority (Disposal of Land) Rules, 1978, for the purposes of cancelling the lease and resuming the possession of the plot in question, which is illegal, inasmuch as the said Rules, 1978 are not applicable to the lease in question, as has been held by a Coordinate Bench of this Court in a judgment reported in **(2015) 2 PLJR 58 (Sanjay Singh vs. The State of Bihar & Ors.)**, which has also been upheld up to the Hon'ble Apex Court, paragraphs no. 10 to 18 whereof are reproduced herein below:-

"10. On consideration of rival contention following issues emerge for determination in this case:-

- i) Whether the respondent nos.4, 5 and 6 were empowered to make a transfer without seeking prior permission of the authority ?
- ii) Whether there would be any requirement



for payment of 50% of the amount earned by such transfer by the respondent nos.4, 5 and 6 in terms of Rule 20 of the of the Patna Regional Development Authority (Disposal of Land) Rules, 1978?

11. It is admitted position that the plot concerned was leased out in favour of one Shri Krishna Prasad Jaiswal, father of the respondent nos.4, 5 and 6 in the year 1961 vide a registered deed of lease by Patna Improvement Trust. The Clause-12 of the lease deed which imposes restriction upon any subsequent transfer is quoted as under for better appreciation:-

“12. That except with the previous consent of the First Party in writing and subject to such terms and conditions as may be prescribed by the First Party, the Second Party shall have no right within ten years of the date of this indenture to transfer by way of sale, exchange or otherwise the aforesaid plot including the structures constructed thereon or the right, title or interest therein; but, no such consent shall be required in matters of gift in favour of an heir or relation or of Will in respect of the said properties.”

12. At that point of time, the Patna Improvement Trust (Disposal of Land) Rules 1957 was also in force. Rule 19 as well as 20 would be relevant for the present purpose and are quoted as under:-

“19. Transfer of land leased or sold by the Trust.- No plot or part thereof leased or sold by the Trust shall be transferred by sale or gift within a period of ten years from the date of lease or sale without the permission of the



Trust.”

“20. Terms and conditions of lease or sales.-
All leases or sales made under these rules shall be subject to such terms and conditions as may be laid down by the Trust and incorporated in the deed of lease or sale.”

13. From the conjoint reading of Clause-12 of the lease deed and the aforesaid rules one would come to the conclusion that if the lessee is going to transfer the land within ten years of the date of execution of the concerned lease executed by the Patna Improvement Trust then prior permission of the authorities of the Patna Improvement Trust was required. However, at that point of time, there was no such provision indicating that the lessee, in case making the transfer within ten years from the date of the execution of the deed he would have to part with 50% of the amount earned by him on subsequent transfer. The Patna Regional Development Authority (Disposal of Land) Rules, 1978 came into existence subsequently in view of the clause 2(a) of Section 79 of the Bihar Regional Development Authority Second Ordinance, 1978.

14. Learned counsel for the Patna Municipal Corporation has drawn attention towards the Rule 20 thereof, which according to him would be relevant for the purpose. For better appreciation, the Rule 20 of the Patna Regional Development Authority (Disposal of Land) Rules, 1978 is also being quoted as under:-

“20. Transfer of land leased by the Authority.-
No plot or part thereof leased by the Authority shall be transferred by sale or gift



within a period of ten years from the date of lease without the permission of the Authority: Provided that the intention to transfer of land along with the conditions of lease shall be indicated in writing to the Authority well in time before the transfer of the land takes place even in cases where a period of ten years have expired:

Provided further that the Authority shall have the first right to resume the land after reimbursing the premium paid by the allottee together with an interest at the rate of 6 per cent per annum on the premium paid by the allottee.

Further that where the Authority grants permission for the transfer of land, the allottee shall pay a mutation fee equal to 50 per cent of excess of sale price, over the premium paid by him. This, however, shall not be less than ten per cent of the premium charged by the Authority by leasing out the plot:

Provided further that the bifurcation of any land or property leased by the Authority shall not take place or its use converted from the use for which the land was leased without the prior approval of the Authority as required under section 32 of the Ordinance.”

15. Perusal of the aforesaid rule would reveal that no plot or part thereof leased by the authority shall be transferred by sale or gift within a period of ten years from the date of lease without the permission of the authority and if the authority grants permission it may be entitled to receive mutation fee equal to 50% interest of sale



price over the premium paid by the Allottee. Even if it is assumed that this provision would be applicable in the present case, the permission would be required only in a situation when a transfer is made within ten years of original settlement and not beyond ten years of the date of execution of original deed of lease.

16. Thus, in my opinion, the requirement of payment of 50% of the profit earned would only arise when permission is also required to be taken from the authority concerned. Where such permission is not required, in my considered opinion, requirement of payment of mutation fee equivalent to 50% of the earned profit would also not be required. That apart, it is well settled that the parties would be bound by the terms and conditions of the agreement. In such situation when the deed of lease does not disclose any requirement of payment of 50% of amount earned by the concerned person on making transfer of the plot concerned even within ten years, in my opinion, by operation of rule introduced subsequently, such condition cannot be changed compelling the lessee to pay such amount. Section 93 of the Bihar Regional Development Authority, 1974/81 would be relevant for understanding the aforesaid proposition. Section 93(1)(d) clearly discloses that notwithstanding the repeal of Bihar Town Planning and Improvement Trust Act, 1951 in view of the provisions contained in Section 93(1) of the Act, anything done or any action taken in the exercise of any power conferred by or under the said Ordinance, presently the Act, shall be deemed to have been



done or taken in exercise of powers conferred by or under the present Act. Similarly Section 93(2) provides that anything done or any action taken under the Bihar Town Planning and Improvement Trust Act, 1951, so far as it is not inconsistent with the provisions of the present Ordinance or Act, would be deemed to have been done or taken under those provisions itself. Sub Section 2(c) of the aforesaid Section provides that all debts, obligations and liabilities incurred, all contracts entered into and all matters to be done by, with or for the improvement Trust or Town Planning Authority and the Controlling Authority shall be deemed to have been incurred, entered into or engaged to be done by, with or for the authority. Not only that, Sub Section 2(i) provides that any plot held by any person as lessee from the Improvement Trust under a registered deed of lease for residential purpose shall be deemed to have been vested in him as perpetual lease from generation to generation on payment of fee to the authority at the rate of one rupee per square meter.

17. From conjoint reading of the aforesaid provisions, one would come to a definite conclusion that the deed of lease executed by the Patna Improvement Trust would be considered to have been executed by the P.R.D.A. itself and, thus, it would also be bound by the terms and conditions set forth in the deed of lease, i.e., Annexure-1.

18. Thus, in my opinion the PRDA cannot ask the allottee to part with 50% of the earned amount even in view of the Rule 20 of PRDA (Disposal of



Land) Rules 1978 also as that would be required only if the transfer is being made within ten years from the date of execution of deed of lease in favour of the allottee, which is admittedly not been done in the case in hand."

42. The learned Senior Counsel for the petitioner has further submitted that since lease is a creation of the Transfer of Property Act, the same can only be cancelled and the possession of the plot can be resumed only by invoking the jurisdiction of the competent civil court by filing a suit and not by an executive order passed either by the Patna Municipal Corporation or by the Empowered Standing Committee, hence, on this ground as well, the impugned order is fit to be set aside. Reference in this connection has been made to the judgment rendered by the Hon'ble Apex Court in the case of ***Express Newspapers (P) Ltd. vs. Union of India***, reported in ***(1986) 1 SCC 133***, paragraphs no. 85 to 86, 194 to 197, 202 to 203 and 206 to 207 whereof are reproduced herein below:-

"85. For the sake of completeness, I wish to clear the ground of a possible misconception. Learned counsel appearing for Respondent 1 the Union of India while contending that the impugned notice dated March 10, 1980 was of an exploratory nature, fairly conceded that the lessor i.e. the Union of India must enforce its right of re-entry upon forfeiture of lease under clause 5 of the lease-deed by recourse to due process of law and



wanted to assure us that there was no question of marching the army or making use of the demolition squad of the Delhi Development Authority or the Municipal Corporation of Delhi in demolishing the Express Buildings. As we felt that there was some ambiguity in the expression “due process of law”, we wanted a categorical answer whether by this he meant by a properly constituted suit. Without meaning any disrespect, the learned counsel adopted an ambivalent attitude saying that the due process may not only consist in the filing of a suit by the lessor or re-entry upon forfeiture of the lease but that in the case of lease of Government lands, the authorities may also take recourse to the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. I have no doubt in my mind that the learned counsel is not right in suggesting that the lessor i.e. the Union of India, Ministry of Works & Housing can in the facts and circumstances of the case, take recourse to the summary procedure under that Act. The Express Newspapers Pvt. Ltd. having acted upon the grant of permission by the lessor i.e. the Union of India, Ministry of Works & Housing to construct the new Express Building with an increased FAR of 360 together with a double basement was clearly not an unauthorised occupant within the meaning of Section 2(g) of the Act which runs as under:

“2 (g) ‘unauthorised occupation’, in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in



occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer), under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever.”

86. The Express Buildings constructed by Express Newspapers Pvt. Ltd. with the sanction of the lessor i.e. the Union of India, Ministry of Works and Housing on plots Nos. 9 and 10, Bahadurshah Zafar Marg demised on perpetual lease by registered lease-deed dated March 17, 1958 can, by no process of reasoning, be regarded as public premises belonging to the Central Government under Section 2(e). That being so, there is no question of the lessor applying for eviction of the Express Newspapers Pvt. Ltd. under Section 5(1) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 nor has the Estate Officer any authority or jurisdiction to direct their eviction under sub-section (2) thereof by summary process. Due process of law in a case like the present necessarily implies the filing of suit by the lessor i.e. the Union of India, Ministry of Works & Housing for the enforcement of the alleged right of re-entry, if any, upon forfeiture of lease due to breach of the terms of the lease.

194. We cannot possibly in these proceedings under Article 32 undertake an adjudication of this kind but I am quite clear that Respondent 5 the Land & Development Officer having already indicated his mind that the amount of conversion charges would be more than Rs 3.30 crores, it would not subserve the interests of justice to



leave the adjudication of a question of such magnitude to the arbitrary decision of the Land & Development Officer who is a minor functionary of the Ministry of Works & Housing. We were informed by Shri Sinha, learned counsel for Respondent 1, the Union of India that the Central Government were contemplating to undertake a legislation and to provide for a forum for adjudication of such disputes. As stated earlier, we had suggested that the dispute as to the quantum of conversion charges payable be referred to the arbitration of an impartial person like a retired Judge of the Supreme Court of India, but this was not acceptable to the respondents. The Union of India may in the contemplated legislation provide for the setting up of a tribunal with a right of appeal, may be to the District Judge or the High Court, to the aggrieved party. If such a course is not feasible, the only other alternative for the lessor i.e. the Union of India, Ministry of Works & Housing would be to realize the conversion charges and additional ground rent, whatever be recoverable, by a duly constituted suit. Till then I would restrain the Union of India, Ministry of Works & Housing and the Land & Development Officer or any other officer of the Ministry from taking any steps for termination of the lease held by Petitioner 1, Express Newspapers Pvt. Ltd. for non-payment of conversion charges or otherwise for the construction of the Express Building till the final determination of such amount to be realized by a statutory tribunal or by a civil court.

195. For these reasons, I would, therefore, for my



part, quash the impugned notices.

196. The result therefore is that these petitions under Article 32 of the Constitution must succeed and are allowed with costs. The notice issued by the Engineer Officer, Land & Development Office dated March 10, 1980 purporting to act on behalf of the Government of India, Ministry of Works & Housing requiring the Express Newspapers Pvt. Ltd. to show cause why the lessor i.e. the Union of India, Ministry of Works & Housing should not re-enter upon and take possession of plots Nos. 9 and 10, Bahadurshah Zafar Marg, New Delhi together with the Express Buildings built thereon, under clause 5 of the indenture of lease dated March 17, 1958 for alleged breaches of Clauses 2(5) and 2(14) thereof, and the earlier notice dated March 1, 1980 issued by the Zonal Engineer (Buildings), City Zone, Municipal Corporation, Delhi requiring them to show cause why the aforesaid buildings should not be demolished under Sections 343 and 344 of the Delhi Municipal Corporation Act, 1957, are quashed. It is declared that the construction of the new Express Building on the residual portion of 2740 square yards on the western side of plots Nos. 9 and 10, Bahadurshah Zafar Marg with an increased FAR of 360 with a double basement for installation of a printing press for publication of a Hindi daily newspaper was with the permission of the lessor i.e. the Union of India, Ministry of Works & Housing and did not constitute a breach of clauses 2(5) and 2(14) of the lease-deed.

197. It is directed that the respondents, particularly the Union of India, Ministry of Works &



Housing, the Delhi Development Authority, and the Municipal Corporation of Delhi, shall forbear from giving effect to the impugned notices in the manner threatened or in any other manner whatsoever. It is further directed that the Union of India, Ministry of Works & Housing shall enforce its claim for recovery of conversion charges by a duly constituted suit or by making a law prescribing a forum for adjudication of its claim. It is also directed that the Municipal Corporation of Delhi shall compound the construction of the double basement of the new Express Building, the excess basement beyond the plinth limit and the underground passage on payment of the usual composition fee.

202. The rest of the questions relate truly to the civil rights of the parties flowing from the lease-deed. Those questions cannot be effectively disposed of in this petition under Article 32 of the Constitution. The questions arising out of the lease, such as, whether there has been breach of the covenants under the lease, whether the lease can be forfeited, whether relief against forfeiture can be granted etc. are foreign to the scope of Article 32 of the Constitution. They cannot be decided just on affidavits. These are matters which should be tried in a regular civil proceeding. One should remember that the property belongs to the Union of India and the rights in it cannot be bartered away in accordance with the sweet will of an officer or a Minister or a Lt. Governor but they should be dealt with in accordance with law. At the same time a person who has acquired rights in such property cannot also be deprived of



them except in accordance with law. The stakes in this case are very high for both the parties and neither of them can take law into his own hands.

203. I, therefore, quash the impugned notices and direct the respondents not to take any further action against the petitioners pursuant to them. I express no opinion on the rights of the parties under the lease and all other questions argued in this case. They are left open to be decided in an appropriate proceeding. It is, however, open to both the parties if they are so advised to take such fresh action as may be open to them in law on the basis of all the relevant facts including those which existed before the impugned notice dated March 10, 1980 was issued by the Engineer Officer of the Land and Development Office to vindicate their respective rights in accordance with law. This order is made without prejudice to the right of the Union Government to compound the breaches, if any, committed by the lessee and to regularise the lease by receiving adequate premium therefor from the lessee, if it is permissible to do so.

206. R.B. MISRA, J.— I have perused the judgment prepared by brother Justice A.P. Sen as also the judgment of brother Justice E.S. Venkataramiah. While I agree that the impugned notices threatening re-entry and demolition of the construction are invalid and have no legal value and must be quashed for reasons detailed in the two judgments, which I do not propose to repeat over again. I am of the view that the other questions involved in the case are based upon contractual obligations between the parties.



These questions can be satisfactorily and effectively dealt with in a properly instituted proceeding or suit and not by a writ petition on the basis of affidavits which are so discrepant and contradictory in this case.

207. The right to the land and to construct buildings thereon for running a business is not derived from Article 19(1)(a) or 19(1)(g) of the Constitution but springs from the terms of contract between the parties regulated by other laws governing the subject viz. the Delhi Development Act, 1957, the Master Plan, the Zonal Development Plan framed under the Delhi Municipal Corporation Act and the Delhi Municipal Bye-laws, 1959 irrespective of the purpose for which the buildings are constructed. Whether there has been a breach of the contract of lease or whether there has been a breach of the other statutes regulating the construction of buildings are the questions which can be properly decided by taking detailed evidence involving examination and cross-examination of witnesses."

43. The learned Senior Counsel for the petitioner has also submitted that it is a well-settled law that when a property / plot has been leased by a statutory authority, the Transfer of Property Act will squarely apply and therefore, any resumption of the possession of the leased lands can only be through the process of law necessitating an eviction decree and execution thereof and there cannot be any forcible dispossession, contrary to the law. Thus, it is submitted that before the right of resumption is to be



exercised, lease is required to be first determined under Section 111 of the Transfer of Property Act. In this Connection, the learned Senior Counsel for the petitioner has referred to a judgment rendered by this Court in the case of **Naintara Sharma & Anr. vs. the State of Bihar & Ors.**, reported in (2011) 3 PLJR 268, paragraph nos. 24 to 28 whereof are reproduced herein below:-

"24. The tenacity of purpose with which the original complainant pursues the petitioner even before this Court is not difficult to appreciate. He is not privy to the contract between the Respondents and the Co-operative Society or the petitioners. But any cancellation by the Corporation of the property situated at a prime location in the town of Patna shall undoubtedly lead to fresh settlement. That is where he has his eyes engineering events. Once his complaint was acted and settlement cancelled he should have rested on his laurels patiently. His conduct in engaging a Counsel and then not providing him a Vakalatnama pursuing the matter from the sidelines, the Court is satisfied of his complete absence of bona fides. Strenuous argument were made that the very transfer to the Society was wrong even before its registration. The document of Lease states to the contrary mentioning the registration number. It is acknowledged that he has taken out no 13 legal proceedings for any alleged settlement wrongly made to the Society in the year 1984 and a transfer made by it to the members in 1985.

25. Clause 22 of the P.R.D.A. (Disposal of land)



Rules, 1978, provides for revocation of the lease at the “option” of the respondents. The clause is therefore not mandatory. Section 488 of the Bihar Municipal Act, 2007 is the Repeal and Savings clause to the P.R.D.A. Act.

26. The lease was for lands. The impugned order itself acknowledges applicability of the Transfer of Property Act to the relationship between the parties. There shall have to be a determination of the lease under Section 111 of the Transfer of Property Act. Any resumption of possession of the leased lands can only be through the process of law necessitating an eviction decree and execution thereof. There can be no forcible dispossession contrary to law by assuming powers that the law does not vest in the Corporation in a relationship of lessor and lessee or sub-lessee.

27. The Indian law permits dispossession of the Lessee by process of Court only and disapproves forcible dispossession contrary to law as explained in (2004) 1 SCC 769 (Rame Gowda v. M. Varadappa Naidu) at paragraph 8 as follows : -

“8. It is thus clear that so far as the Indian law is concerned, the person in peaceful possession is entitled to retain his possession and in order to protect such possession he may even use reasonable force to keep out a trespasser. A rightful owner who has been wrongfully dispossessed of land may retake possession if he can do so peacefully and 14 without the use of unreasonable force. If the trespasser is in settled possession of the property belonging to the rightful owner, the rightful owner shall have to take recourse to



law; he cannot take the law in his own hands and evict the trespasser or interfere with his possession. The law will come to the aid of a person in peaceful and settled possession by injuncting even a rightful owner from using force or taking the law in his own hands, and also by restoring him in possession even from the rightful owner (of course subject to the law of limitation), if the latter has dispossessed the prior possessor by use of force. In the absence of proof of better title, possession or prior peaceful settled possession is itself evidence of title. Law presumes the possession to go with the title unless rebutted. The owner of any property may prevent even by using reasonable force a trespasser from an attempted trespass, when it is in the process of being committed, or is of a flimsy character, or recurring, intermittent, stray or casual in nature, or has just been committed, while the rightful owner did not have enough time to have recourse to law. In the last of the cases, the possession of the trespasser, just entered into would not be called as one acquiesced to by the true owner."

28. The order dated 6.4.2011 is set aside. The Corporation is directed to remove any lock that it may have put on the premises. The Corporation may proceed afresh in accordance with law, if so advised. Nothing in this order shall affect or be deemed to affect the proceedings in Vigilance Case no. 20B of 2010 in so far as enforcement of the building regulations are concerned and which



shall have to be adjudicated on its own merits but in accordance with law. The application is allowed."

44. The learned Senior Counsel for the petitioner has further submitted that it is an equally well-settled law that even a trespasser cannot be dispossessed without following the due process of law. In this connection, the learned Senior Counsel for the petitioner has referred to two judgments, reported in **AIR 1968 SC 620** and **2004 (4) PLJR (SC) 32**.

45. The learned Senior Counsel has also referred to Section 27B of the Bihar Municipal Act, 2007, which defines powers and duties of the Chief Municipal Officer (Commissioner) and Section 28 thereof, which confers power upon the municipality to delegate its power to the Empowered Standing Committee, which in turn can also delegate certain powers to the Chief Municipal Officer, however, no such power has either been delegated by the Municipality to the Empowered Standing Committee or by the Empowered Standing Committee to the Chief Municipal Officer, thus, the impugned order is bad in law inasmuch as no power is vested with the Commissioner, Patna Municipal Corporation, to resume the possession of the leasehold property. It is further submitted that the Chief Municipal Officer (Commissioner) is only empowered to take action in case, a building is being constructed without a sanctioned map or is being constructed in violation of the approved



map, as is clear from Chapter XXXVI of the Bihar Municipal Act, 2007.

46. It is also submitted that it is a well-settled law that statutory authorities cannot travel beyond the powers conferred upon them under the statute, as such, the Commissioner, in the present case, could not have either directed for demolition of the building in question or directed for resuming the possession of the leasehold land in question, especially since lease cannot be cancelled and possession cannot be resumed by taking recourse to a vigilance case, which, in any case, is instituted for enforcement of building regulations.

47. The learned Senior Counsel for the petitioner has also submitted that the order dated 10.05.2013 passed in a public interest litigation by the learned Division Bench of this Court in CWJC No. 8152 of 2013 is also not applicable in the present case inasmuch as the building in question had been completed prior to passing of the said order dated 10.05.2013.

48. The learned Senior Counsel for the petitioner has further submitted that the Commissioner, Patna Municipal Corporation, has got no power of review, hence, he was precluded from re-opening the issues, which his predecessor had already concluded. It is submitted that once, the map had been sanctioned or approved by the competent authority as also by the committee constituted



for this purpose under the modified building bye-laws, the same could not have either been cancelled or reviewed subsequently, in case of there being no fraud or no material misrepresentation. In the present case, there has been neither any fraud nor any material misrepresentation in getting the map sanctioned, but still, the Commissioner, Patna Municipal Corporation, has thought it proper to sit over the permission granted for construction by the then Chairman of the PRDA in the year, 1980 and 1984 and then, by the Commissioner in the year 2009, which is impermissible in law, since the Chairman, PRDA and the Commissioner, Patna Municipal Corporation, are of the same rank, hence, once, approval / sanction has been given by the competent authority as per Appendix-M of the building bye-laws, which permits construction of commercial complex on residential plots, the new incumbent could not have reopened the file and reviewed the sanction. The learned Senior Counsel for the petitioner has next submitted that the Commissioner, Patna Municipal Corporation, has come to an erroneous finding that the sanctioned map in question is forged inasmuch as the map for G+2 residential building was sanctioned vide Plan Case No. 537 of 1980 on 05.08.1980, which was revalidated by PRDA on the request of the lessee. Thereafter, on 20.12.2007, the Patna Municipal Corporation resolved that for sanction of residential/ commercial building in Rajendra



Nagar and Sri Krishnapuri area, the existing building bye-laws shall be followed, whereafter, the legal heirs of the original lessee applied for modified building plan vide Plan Case No. 537 of 1980 with regard to the proposed residential cum commercial building i.e. B+G+6, as per the provisions contained in Appendix-M of the then existing bye-laws, which provides that under special circumstances, plan for commercial building can be sanctioned in a residential area. The modified building plan was then sanctioned by the competent authority vide the Revised Plan Case No. 537 of 1980 on 30.04.2009 and the Fire Department had also given its no objection vide letter dated 08.06.2009 and finally the approved plan was issued on 24.02.2010, the date on which raid was conducted in the office of the Patna Municipal Corporation Commissioner. It is submitted that only reason for doubting the genuineness of the map in question is that the revised map, which was revised on 30.04.2009 by the then Executive Engineer, does not contain the signature of Assistant Engineer as well as the Office Assistant and the issue register does not indicate that any such map was issued. In this regard, it is submitted that the said reasoning / finding of the learned Commissioner are absurd inasmuch as it is an admitted fact that the map was sanctioned on 30.04.2009 and then, it was sent to the Fire Department, which gave its approval vide letter dated 08.06.2009 and the learned Commissioner



nowhere in the impugned order dated 01.08.2014 says that the map was not sanctioned rather it is the case of the respondents that the signatures of Assistant Engineer and Office Assistant are not present and the issue register does not indicate that the map was issued, thus the map was antedated. It is stated that in case, the Commissioner was so sanguine about the map being forged, nothing had prevented him from lodging a criminal case.

49. Lastly, it is submitted that in any view of the matter, there are provisions for condonation / regularization of any deviation etc. by imposing penalty / fine or resorting to part demolition, but instead of resorting to the statutory provisions, the Commissioner, Patna Municipal Corporation, by the impugned order dated 01.08.2014, has taken an illegal and drastic action of resumption of land.

Contentions of the learned counsel for the petitioner, Sri Jitendra Kumar Verma, in CWJC No. 6546 of 2017 (Sanjay Singh vs. Patna Municipal Corporation & Ors.)

50. The learned counsel for the petitioner, in the present case, has also adopted the arguments advanced by the learned Senior Counsel Sri Umesh Prasad Singh, in CWJC No. 10975 of 2017, however, in addition thereto, it has been submitted that the scope of entire proceedings of the vigilance case in question is confined within the four corners of the Bihar Municipal Act, 2007 especially, Chapter XXXVI thereof, pertaining to regulating construction of



building according to the sanctioned plan and bye-laws, thus the Commissioner, Patna Municipal Corporation could not have enlarged the scope so as to vest itself with the jurisdiction to predominantly examine the violation of the terms of the original lease and order for its cancellation / resumption of possession, in exercise of power of re-entry under the garb of exercise of power of Municipal Commissioner under the Act, 2007. It is submitted that the authorities under the Bihar Municipal Act have got no jurisdiction to cancel / determine the lease and resume possession in exercise of power of re-entry under the terms of lease deed rather such power can only be exercised through the competent civil court and not by an executive fiat.

51. It is further submitted that the possession of the plot in question can be resumed and the lessee evicted only by approaching the learned civil court in terms of the provisions contained in the Specific Relief Act and the Code of Civil Procedure and the Commissioner, Patna Municipal Corporation, is not vested with the power to either resume possession of the plot in question or determine the lease or evict the lessee on his own i.e. without taking recourse to the due process of law. In this regard, the learned counsel for the petitioner has referred to Sections 106, 111, 114 and 114A of the Transfer of Property Act as also to the judgment rendered by the Hon'ble Apex Court in the case



of ***Express Newspapers (P) Ltd.*** (supra).

52. The learned counsel for the petitioner has also submitted that the petitioner undertakes that the building in question shall be used for residential purposes only.

53. The learned counsel for the petitioner has further submitted that part transfer is not considered as a violation of the terms of the lease unless and until specifically restricted. It is submitted that the Hon'ble Apex Court in a judgment reported in **(2002) 2 SCC 624 (Raghuram Rao vs. Eric P. Mathias)** has categorically held that the lease being the document prepared by the lessor, its terms have to be construed strictly against the lessor and where the terms of the lease does not expressly restrict part transfer of the plot and only restricts transfer of entire plot, transfer of part of the demised plot is not a violation of the express terms of lease. It would be apt to reproduce paragraphs no. 19 to 26 of the aforesaid judgment rendered in the case of ***Raghuram Rao*** (supra) herein below:-

"19. However, the next contention which requires consideration is: whether there is express condition which prohibits partial alienation of the leasehold property.

20. The finding of the High Court on the question of partial alienation, in our view, is without considering the facts as discussed in detail by the trial court as well as by the first appellate court. Both the courts on facts held that there was partial alienation of the



leasehold property. It appears that the High Court took into consideration the alienations because of the partition suits filed between the family members of the deceased lessee, but forgot the fact that the lessor in the suit itself had stated that as the said alienations were between family members, forfeiture clause was not invoked at that time. Same thing is stated before this Court in written submission filed by the learned counsel for the appellant-defendants. The first appellate court has specifically arrived at the conclusion that out of the leasehold property which was 40 cents what has been alienated in both the suits was only to the extent of 29 cents and the remaining 11 cents acquired in the partition by Sanjiva Sapalya was not the subject-matter of alienation. It appears that the High Court has overlooked this aspect and decided the entire matter without application of mind to the facts and contentions of the parties.

21. In the present case, the afore-quoted lease deed was executed by the lessee and not by the lessor. In the lease deed it is provided that the lessee (*I*) will not have any right to alienate the property, either the right of permanent tenancy or the buildings etc. (which may be built by the lessee on the property) by way of sale of mulgeni or in whatsoever manner to others and if such alienation is affected, the permanent lease shall be liable to be totally cancelled and the property shall be reverted to the possession and enjoyment of (*you*) lessor, on receiving the value of the buildings and



improvements estimated by four gentlemen. Therefore, there is express condition accepted by the lessee not to alienate the leasehold property. However, there is no express condition to the effect that the lessee will have no right to alienate part of the property. With regard to the nature of the mulgeni tenure, it has been observed by the Bombay High Court in *Vyankatraya Bin Ramkrishnapa case* [ILR (1883) 7 Bom 256] that this class of people may be considered rather as subordinate landlords than as tenants of the soil, more especially as though many of them cultivated their lands by means of hired labourers or others sub-rented them to the temporary tenants.

22. Further, Section 111(g) itself requires that for forfeiture, the lessee should commit breach of "an express condition" which provides that on breach thereof, the lessor may re-enter. The words "express condition" themselves stipulate that condition must be clear, manifest, explicit, unambiguous and there is no question of drawing any inference. In our view, as there is no express condition restraining partial alienation of the leasehold property, it would not be open to the transferee of the lessor's right to invoke the forfeiture clause for determining the perpetual lease and such conditions cannot be inferred by implication.

23. On similar clause, it appears that there is uniformity of interpretation by various High Courts that unless there is an express condition restraining partial alienation, forfeiture clause



would not apply.

24. In *A. Venkataramana Bhatta v. Krishna Bhatta* [AIR 1925 Mad 57] the Court held thus: (AIR p. 58)

A clause for forfeiture must always be construed strictly as against the person who is trying to take advantage of it, and effect should be given to it only so far as it is rendered absolutely necessary to do so by the wording of the clause.

A covenant against assignment does not prevent the tenant from assigning for any part of the term or from assigning a portion of the premises and unless the covenant is expressly worded to exclude a partial alienation of the premises, a partial alienation will not work forfeiture under a clause which prevents alienation of the premises. It is always open to the landlord to put into his lease a covenant against alienation either complete or partial, if he intends that forfeiture should result from partial alienation as well, but where he does not do so, the covenant will not apply to a partial alienation — *Grove v. Portal* [(1902) 1 Ch 727 : 86 LT 350] .

25. In *David Cutinha v. Salvadora Minazes* [AIR 1926 Mad 1202] the Court observed thus: (AIR pp. 1202-03)

“There is ample authority in the English law and in fact in the law here too to show that unless there is a restriction against the



assignment of any portion of the demised property, the restraint on the alienation of the demised premises will not prevent the alienation of a portion. I am not impressed with the reasoning of the learned District Judge as to the grant of a mulgeni lease not being an alienation. It clearly is an alienation. But I think that the respondents must succeed on the ground that the restriction on alienation of a portion of the demised premises is not contained in the words of the lease which I have set out above. It is perhaps not necessary to multiply examples, but there are some cases which have been cited and which lend support to the contention for the respondent, for instance in *Grove v. Portal* [(1902) 1 Ch 727 : 86 LT 350] Joyce, J., quotes the passage already cited from *Church v. Brown* [(1808) 15 Ves 258 : (1803-13) All ER Rep 440] and says that the dictum of the lower court has never been disapproved of; and again in *Russell v. Beecham* [(1924) 1 KB 525 : 93 LJ KB 441 : 130 LT 570 (CA)] Scrutton, L.J. says quoting Lord Eldon again that:

‘A covenant not to part with possession of premises would not restrain the tenant from parting with a part of the premises, these covenants having been always construed by courts of law with the utmost jealousy to prevent the restraint from going beyond the express stipulation.’

In *Chatterton v. Terrel* [1923 AC 578 : 92 LJ Ch



605 : 129 LT 769 (HL)] Lord Wrenbury says:

‘It is said and said with truth, that if there be a covenant not to assign or underlet the premises, it is not a breach to assign or sub-let part of the premises. It was not so stipulated, if those be the words, for the words “or any part thereof” are not found in the covenant.’ ”

26. The above judgments are followed in *P. Veda Bhat v. Mahalaxmi Amma* [AIR 1947 Mad 441 : (1947) 1 MLJ 229] . Same view is also taken in *Keshab Chandra Sarkar v. Gopal Chandra Chanda* [AIR 1937 Cal 636 : 65 CLJ 305] and in *Indraloke Studio Ltd. v. Santi Debi* [AIR 1960 Cal 609]."

54. In such view of the matter, it is submitted that the impugned order dated 28.11.2014 passed in Vigilance Case No. 97A of 2013, holding that the terms and conditions of lease have been violated, is clearly an illegal order without jurisdiction.

55. It is also submitted that neither in the show cause notice nor in the impugned order, any specific violation of the provisions of Patna Improvement Trust (Disposal of Land) Rules, 1957 has been either alleged or found. So far as the allegation of making construction without consent is concerned, it is submitted that there is absolutely no violation since the petitioner has been making construction pursuant to an approved plan / map dated 02.05.2012, issued by the certified Architect of the Patna Municipal



Corporation in terms of Section 314 of the Bihar Municipal Act, 2007 and after getting NOC from the Municipal Commissioner, Patna Municipal Corporation.

56. It is submitted that the reliance placed by the respondents on the orders passed in the PIL being CWJC No. 8152 of 2013 is also not relevant to the facts and circumstances of the present case and is confined to the facts of that case inasmuch as the petitioner was not a party to the said case.

Contentions of the Ld. Counsel for the petitioner in CWJC No. 2432 of 2017 (Smt. Arti Banerjee Vs. Patna Municipal Corporation & Ors.).

57. The learned counsel for the petitioner has adopted the arguments made by the learned Senior Counsel/ counsel in CWJC No. 10975 of 2017 and CWJC No. 6546 of 2017.

Contentions of the Ld. Counsel for the respondents

58. The learned counsel for the Respondents, Sri Prasoon Sinha, Advocate, has at the outset submitted that in compliance of the directions issued by the learned Division Bench in a PIL bearing CWJC No. 8152 of 2013 (Narendra Mishra vs. The State of Bihar & Ors.) vide orders dated 10.05.2013, 02.07.2013, 19.09.2013 and 09.10.2013, teams of engineers were constituted by the order of the Municipal Commissioner, Patna Municipal Corporation, for taking measurements of the buildings / apartments under construction, whereafter the said teams had conducted



measurements and submitted their reports and then notices were issued to the builders and landholders / owners. It is stated that in such process, notices were also issued to the writ petitioners asking them to show cause as to why action should not be taken against them for engaging in construction activities in violation of the Bihar Municipal Act, 2007 and the building bye-laws as also they were asked to file their show cause reply as to why the lease of the plot in question be not terminated for violating the terms and conditions of the lease deed in question, whereafter the petitioners had filed their replies and then, the impugned orders were passed by the Municipal Commissioner, Patna Municipal Corporation.

59. It is submitted that the Patna Improvement Trust was created under the Bihar Town Planning and Improvement Trust Act, 1951 and similarly, rules were framed exercising the power conferred by Section 134 of the said Act, 1951 in the name and style of the Patna Improvement Trust (Disposal of Land) Rules, 1957. The Patna Improvement Trust had acquired 64 acres of land for developing a colony named as Sri Krishnapuri under the Trust Improvement Scheme and public residential plots were carved out for allotment on lease for a period of 99 years and in pursuance thereof, the land in question was allotted on lease to the lessees and a lease deed was executed by the Estate Officer, Patna Municipal Corporation, as aforesaid,



for the express purpose of constructing residential building. It is submitted that the terms and conditions of the lease deeds in question categorically provide that the building constructed on the aforesaid plots was to be used only for residential purposes. It is further submitted that Clause 14 of the lease deed in question categorically envisages the consequences, including termination of the lease, in the event of violation of the terms and conditions of the deed of lease, in violation of the provisions of the Patna Improvement Trust (Disposal of Land) Rules, 1957, the Bihar Regional Development Authority Second Ordinance, 1975 and the Patna Municipal Corporation Ordinance No. 2 of 2007 as also the rules and regulations framed thereunder. It is submitted that the deed of lease in the present case is a contract between the lessor and the lessee and the same has been terminated after issuance of the show cause and hearing the petitioner at length.

60. The learned counsel for the Patna Municipal Corporation, by referring to the facts of C.W.J.C. No. 6546 of 2017, has submitted that the petitioner, in violation of the terms and conditions of the deed of lease, in violation of the undertakings given by him on affidavit before the authorities of the Patna Municipal Corporation for constructing the building in question and in violation of the permission granted by the Municipal authorities, had



entered into an agreement with a builder cum developer, by means of a registered instrument, for constructing a multi-storied residential-cum-commercial building i.e G+5 floors building including a showroom and it has been stipulated in the agreement that both the parties i.e the owner and the developer will be entitled to equal share in the ratio of 50:50. It is stated that the petitioner has violated the terms and conditions of the lease deed in question inasmuch as not only a portion of the lease land has been transferred but the petitioner has also engaged in making construction for commercial purposes, hence, the lease in question has been rightly cancelled by the Municipal Commissioner, Patna Municipal Corporation, by the impugned order dated 28.11.2014, after issuing notice and granting proper opportunity of hearing to the petitioners herein.

61. The learned counsel for the respondents has also referred to clause 2 of Rule 22 of the Patna Regional Development Authority (Disposal of Land) Rules 1978, which reads as follows:-

“22. Contravention of provision of these rules.-

(1) if at any time subsequent to the execution of any deed of lease, it is discovered that the lease has been made in contravention of any of these rules, the same shall be void and shall stand revoked.

(2) Any lease, in respect of which there has been a breach at any time after the execution of the



deed of lease of any terms or conditions laid down by the Authority, shall be liable to revocation at the option of the Vice-Chairman or such officer of the authority as may be empowered by the Authority.”

62. The learned counsel for the respondents has also referred to Section 76(1) of the Bihar Regional Development Authority Act to submit that the provisions of the Act and the rules and regulations made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law. The learned counsel for the respondents has also referred to Section 93 of the Bihar Regional Development Authority Act, which deals with the provisions of repeal and savings especially Section 93(1)(a) of the Bihar Regional Development Authority Act whereby and whereunder the Bihar Town Planning and Improvement Trust Act, 1951, the Bihar Restriction of Uses of Land Act, 1948 have ceased to have any effect. Similarly, according to Section 93(1)(b) of the Bihar Regional Development Authority Act, the Improvement Trust as constituted under the Bihar Town Planning and Improvement Trust Act, 1951 has ceased to exist.

63. As far as Section 93(2)(i) of the Bihar Regional Development Authority Act is concerned, it has been submitted that the same was a conditional and enabling provision whereby the lands within the area notified under Section 1, held by any person as lessee from the



Improvement Trust or the Town Planning Authority under a registered deed of lease for residential purposes, was deemed to be vested in him as perpetual leases from generation to generation on payment of fee to the authority at the rate of one rupee per square meter, however, it is submitted that the petitioner did not act in accordance with the said provision and has never paid fee to the authorities as provided therein. Moreover, it is submitted that the said provision has already been repealed by virtue of Section 488 of the Bihar Municipal Act 2007, hence, no benefit can be claimed by the petitioner under Section 93(2)(i) of the Bihar Regional Development Authority Act.

64. The learned counsel for the respondents has referred to Section 488 of the Bihar Municipal Act, 2007, relevant portion whereof is reproduced herein below:-

“488. Repeal and Savings. - (1) With effect from the date of coming into force of this Act, the Bihar Municipal Act, 1922, Patna Municipal Corporation Act, 1951, Bihar Municipal Corporation Act, 1978, Bihar Regional Development Authority Act, 1981, Bihar Town Planning & Improvement Trust Act, 1951, Bihar Restrictions of Uses of Land Act, 1948, Bihar Municipal Ordinance, 2007 shall stand repealed.

(2) Gram Panchayats, Panchayat Samities and Zila Parishads, constituted under the Bihar Panchyat Raj Act 2006, whose jurisdiction extend over the Municipal Area shall not exercise



powers and functions as have been entrusted to the Municipality under this Act.

(3) The Regional Development Authorities set up under the Bihar Regional Development Authority Act, 1981, the Improvement Trust or Town Planning Authority set up under the Bihar Town Planning and Improvement Trust, Act, 1951, the Controlling Authority constituted under the Bihar Restriction of Uses of Land Act 1948, shall cease to exist with effect from the date of this Act comes into force,

(4) Notwithstanding the provisions of sub-section (1): and sub-section (3)

(a) Subject to the scrutiny of the requirements of the Municipality assessed by an officer or officers appointed by the State Government, every such officer or other employee serving with various authorities, organisations set up under the Acts listed in sub-section (1) and (3) of this Section, immediately before the date of the commencement of this Act and on and from such date shall be deemed to have been transferred to and become an officer or other employee of the Municipality with such designation as the Municipality may determine and may hold office by the same tenure, at the same remuneration and on the same terms and conditions of service as he would have held if the Acts were not repealed, and shall continue to do so unless and until such tenure, remuneration and terms and conditions are duly altered by the Municipality:



Provided that any service rendered by such an officer or other regular employees before the repeal of the Act shall be deemed to be service rendered under the Municipality:

Provided further that the officer or officers appointed by the State Government shall screen and verify service record of each officer and employee and only such officers and employees shall be absorbed in the municipality which have been appointed against duly sanctioned posts in accordance with law by a Competent Authority.

- (b) Anything done or any action taken (including any appointment, Rule, bye-laws, Regulation made, granted or issued under various Acts listed in sub-section (1) and (3) of this Section shall, continue to be in force and be deemed to have been done or taken under the provisions of this Act unless it is superceeded modified/alterd by any thing done or any action taken under this Act.
- (c) All debts, obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done by, with or for the various authorities organisations set up under the Acts listed in subsection 3 of this Section shall be deemed to have been incurred, entered into or engaged to be done by, with or for the Municipality.
- (d) All properties movable and immovable and all rights, title, and interest in any property vested in the authorities organisations (set up



under the Acts) listed in sub-section (1) and (3) of this Section shall vest in the Municipality and all properties in possession of such organisations shall be deemed to be due to the Municipality.

(e) All suits, prosecution, and other legal proceedings instituted or which might have been instituted by, for, or against the said authorities organisation listed in sub-section (1) and (3) of this Section may be continued or instituted by, for or against the Municipality.

(f) All sums charged on any property under various Acts listed in sub-section(1) of this Section or the Rules or Regulations framed thereunder shall continue to be charged on that property and the charge shall be enforceable by the Municipality.

(g) From the date Act comes into existence, Municipality will have the same right as the said various authorities, organisations had in all lands within the area notified under sub-section (1) and (3) of the Act which were previously held by the said various authorities, organisations on lease from the State Government for a certain period or the possession of which has been delivered to the aforesaid authorities/ organisations.

(h) The Municipality shall continue to enjoy the powers to realise the various sources of income in terms of levies, fees, cess, etc.; otherwise empowered to be realised by said various authorities organisation under their



respective Acts and Rules and Regulations framed thereunder specified under sub-section(3) of this Section of the Act, as if the said authorities were still functioning under their respective Statutes until the same are amended by the Municipality from time to time.

(5) Notwithstanding such repeal, anything done or any action taken in exercise of any power conferred by or under the Acts/Ordinance referred in sub-section (1) shall be deemed to have been done or taken in exercise of the powers conferred under this Act, as if this Act were in force on the day on which such things or action was done or taken.

65. The learned counsel for the respondents has also referred to a judgment rendered by the Hon'ble Apex Court, reported in **(2018) 4 PLJR 411 (SC) [Dalip Singh & Ors. Vs. State of Haryana & Ors.]**, paragraph nos. 19 to 22 whereof are reproduced herein below:-

"**19.** All the judgments relied upon by the appellants are distinguishable on facts. Even assuming that for some other allottees, order of resumption of plot had been quashed/ cancelled, the appellants cannot claim equality of treatment. Article 14 is a positive concept and cannot be enforced by a citizen in a negative manner. In *State of Orissa v. Mamata Mohanty* [*State of Orissa v. Mamata Mohanty*, (2011) 3 SCC 436 : (2011) 2 SCC (L&S) 83 : 4 SCEC 96] , it was held as under: (SCC p. 458, para 56)



“56. It is a settled legal proposition that Article 14 is not meant to perpetuate illegality and it does not envisage negative equality. Thus, even if some other similarly situated persons have been granted some benefit inadvertently or by mistake, such order does not confer any legal right on the petitioner to get the same relief. [Vide *State (UT of Chandigarh) v. Jagjit Singh* [*State (UT of Chandigarh) v. Jagjit Singh*, (1995) 1 SCC 745] ; *Yogesh Kumar v. State (NCT of Delhi)* [*Yogesh Kumar v. State (NCT of Delhi)*, (2003) 3 SCC 548 : 2003 SCC (L&S) 346] ; *Anand Buttons Ltd. v. State of Haryana* [*Anand Buttons Ltd. v. State of Haryana*, (2005) 9 SCC 164] ; *K.K. Bhalla v. State of M.P.* [*K.K. Bhalla v. State of M.P.*, (2006) 3 SCC 581] ; *Krishan Bhatt v. State of J&K* [*Krishan Bhatt v. State of J&K*, (2008) 9 SCC 24 : (2008) 2 SCC (L&S) 783] ; *State of Bihar v. Upendra Narayan Singh* [*State of Bihar v. Upendra Narayan Singh*, (2009) 5 SCC 65 : (2009) 1 SCC (L&S) 1019] ; *Union of India v. Kartick Chandra Mondal* [*Union of India v. Kartick Chandra Mondal*, (2010) 2 SCC 422 : (2010) 1 SCC (L&S) 385] .]”

20. This Court issued notice (vide order dated 7-1-2015 [*Dalip Singh v. State of Haryana*, (2019) 11 SCC 431]) on the basis of submissions made on behalf of the appellants that they are agreeable to pay the present market value of the plot in question. The learned Senior Counsel Mr Nidhesh Gupta appearing for the appellants submitted that the appellants are ready to pay the present market value of the plot in question.



Refuting the said submission, the learned counsel for HUDA has submitted that at present, there is no HUDA policy to allot the resumed industrial plot on the current market price. It was submitted that allotment of industrial plots at present is governed by Estate Management Procedure (EMP), 2011 and the subsequent EMP, 2015 as per which, industrial plot is to be allotted or disposed of only as per regulation/policy. It was submitted that industrial plots are disposed of as per EMP and in this regard, the learned counsel has drawn our attention to the counter filed as to the EMP governing the allotment of the industrial plots including the invitation of applications through advertisements. When allotment of industrial plots is thus governed by EMP, the prayer of the appellants that they are ready to pay the current market rate for the industrial plot cannot be considered.

21. The allotment of Industrial Plot No. 306, Industrial Area, Phase II, Panchkula in 1984 to Rabinder Nath was in his capacity as Managing Director of M/s Shiva Dairy & Oil Mills. The plot was thus allotted to the partnership firm. The appellants have not been able to show as to how they stepped into the shoes of the partnership firm, apart from the mere fact that they are legal heirs of Rabinder Nath. As discussed earlier, at the time of making application for allotment of industrial plot, the applicant has to clearly disclose all the facts regarding the type of industry to be started, licence if necessary under law, project report, estimated cost of project, details regarding time required in completing the



project, details of employees required, source of fund, etc. The project so submitted is then approved by the competent authority after considering its viability. The applicants are then issued letter of intent/provisional allotment letter with condition to complete the other formalities within the stipulated period of time and after completion of formalities, regular allotment letter is issued in favour of the applicant. As pointed out earlier, the undertaking of the production as per the approved project is the foundation for the allotment of the industrial plots which is with twin object of economic development and generation of employment opportunities. Over the years, the State has undergone substantive changes and economic growth. Land/industrial plots now becoming very scarce, governed by the present EMP, the appellants cannot seek for revocation of resumption by contending that they are ready to pay the current market rate.

22. The court can interfere with the revocation of resumption of land only if the executive has not carried out its duty or acted in violation of the procedure. Clause 11 of the terms and conditions of allotment clearly stipulates that in the event of breach of any of the conditions of transfer, the Estate Officer may resume the land in accordance with the provisions of Section 17 of the HUDA Act, 1977. The order of resumption of the plot is as per the terms and conditions of the allotment order and the High Court rightly refused to interfere with the order of the revisional authority. The appellants having failed before all the forums including the High Court and also the revisional



authority, we do not find any serious infirmity or illegality in the order of resumption of the plot and therefore, this appeal is liable to be dismissed."

66. The learned counsel for the Respondents has further submitted that the impugned order has been passed in accordance with the provisions contained in the relevant Act / Rules, after affording ample opportunity of filing of show cause reply and hearing to the petitioner herein, hence, there is no infirmity in the impugned orders passed by the learned Commissioner, Patna Municipal Corporation, thus, the present writ petition along with other writ petitions are fit to be dismissed.

67. As far as the other three cases are concerned, Sri Prabhakar Singh, Advocate, appearing for the Respondents, Patna Municipal Corporation, has adopted the arguments advanced by Sri Prasoon Sinha, Advocate, in CWJC No. 6546 of 2017 and has further relied upon the averments made in the counter affidavit, as filed in each of the aforesaid cases.

Determination

68. I have heard the learned counsel for the parties and perused the voluminous records of the aforesaid four writ petitions as also the various judgments / authorities cited and relied upon by the learned counsel for the parties. I find that the most important and vital issue, which is required to be adjudicated first, in all the four writ petitions, is as to whether the Commissioner, Patna Municipal Corporation, by the impugned orders passed in the aforesaid cases, could have cancelled the lease deed and resumed the possession



of the premises in question along with the under construction building. In this connection, first of all, I would like to refer to Section 93(2)(i) of the Bihar Regional Development Authority Act, 1981, which provides that any plot held by a lessee from the Improvement Trust under a registered deed of lease for residential purposes would be deemed to be vested in such person / lessee as a perpetual lease from generation to generation. This Court further finds that the power of resumption or re-entry can be resorted to only by the Trust under the Patna Improvement Trust (Disposal of Land) Rules, 1957 and the successor of the Trust, however, the Municipal Commissioner under the Bihar Municipal Act, 2007 has not been vested with the power either to cancel the lease deed or the power of resumption / re-entry on the lease land in question, hence, resumption of the premises in question can only be resorted to by the due process of law.

69. This Court also finds that by virtue of Section 93(2)(i) of the Bihar Regional Development Authority Act, 1974, the lease deed has been made perpetual by the force of law, hence, Clause 12 of the lease deed in question has stood void, as such, the lease in question can only be resumed by taking recourse to appropriate remedies available before the learned civil court. Moreover, the power of resumption or re-entry can be resorted to only by the Trust under the Rules, 1957 as also by the successor of the Trust, but the



Municipal Commissioner under the Act, 2007 has not been vested with either the power to cancel or the power of resumption. This Court further finds that in terms of Clause (g) of Section 111 read with Section 112 of the Transfer of Property Act, 1882, the Municipal Corporation would be deemed to have waived right, if any, vested in them from forfeiture of lease because they have accepted the lease rent and / or holding tax at the commercial rates.

70. Yet another aspect of the matter is that Clause 15 of the lease deed in question clearly stipulates that Patna Improvement Trust shall have the right to re-enter and resume possession of the plot in cases of breach of any of the provisions of the Patna Improvement Trust (Disposal of Land), Rules 1957 as well as in cases of breach of the provisions of the lease deed in question. It is an admitted fact that the said Rules, 1957 have not been repealed till date and are still in existence and as per Rule 21(2) of the said Rules, 1957, only the Trust is vested with the power to resume possession of land in cases of breach of the provisions of the lease deed and not the Chairman of the Patna Improvement Trust. Nonetheless, accepting the contention of the learned counsel for the Respondents, Patna Municipal Corporation, to the effect that the Patna Municipal Corporation has stepped into the shoes of the Trust of Patna Improvement Trust, then also the power to resume the land / building in question, at best, can be said to be vested with the Patna Municipal Corporation and not with the Commissioner, Patna Municipal Corporation, hence, on this ground as well, the impugned orders passed by the learned Commissioner, Patna Municipal Corporation, are illegal and void.



71. This Court further finds that the Commissioner, Patna Municipal Corporation, has invoked the provisions of Patna Regional Development Authority (Disposal of Land), Rules, 1978 for the purposes of cancelling the lease and resuming possession of the land in question, however, this Court is of the view that the said Rules, 1978 are not applicable to the lease in question inasmuch as firstly, the Patna Improvement Trust (Disposal of Land), Rules, 1957 have not yet been repealed till date and secondly, the Patna Regional Development Authority (Disposal of Land) Rules, 1978 was enacted at a time when there was no assent of the president to the Bihar Regional Development Authority Second Ordinance, 1978 and the same came into force only vide notification dated 23.01.1982, whereafter the same was published in the gazette on 25.01.1982, thus, the said Rules, 1978 neither survived nor are in existence. In fact, Section 488 of the Bihar Municipal Act, 2007 would also show that the Patna Improvement Trust (Disposal of Land) Rules, 1957 have not stood repealed.

Moreover, invoking the provisions of Patna Regional Development Authority (Disposal of Land) Rules, 1978, for the purposes of cancelling the lease and resuming the possession of the plot in question is illegal, inasmuch as the said Rules, 1978 are not applicable to the lease in question, as has been held in a judgment reported in **(2015) 2 PLJR 58 (Sanjay Singh vs. The State of Bihar & Ors.)**.



In such view of the matter, exercise of power by the Commissioner, Patna Municipal Corporation, for the purposes of resuming of land / building in question, which is not vested in him, is illegal and bad in law, hence, resumption of the possession of the premises in question could have been done only by taking recourse to the due process of law.

72. At this juncture, it would be relevant to reproduce Sections 106, 111, 112, 114 and 114A of the Transfer of Property Act, 1882 herein below:-

“106. Duration of certain leases in absence of written contract or local usage

In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice expiring with the end of a year of the tenancy; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice expiring with the end of a month of the tenancy.

Every notice under this section must be in writing, signed by or on behalf of the person giving it, and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants at his residence, or (if such tender or delivery is not



practicable) affixed to a conspicuous part of the property.

111. Determination of lease

A lease of immovable property determines-

- (a) by efflux of the time limited thereby,
- (b) where such time is limited conditionally on the happening of some event-by the happening of such event,
- (c) where the interest of the lessor in the property terminates on, or his power to dispose of the same extends only to, the happening of any event-by the happening of such event,
- (d) in case the interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right,
- (e) by express surrender, that is to say, in case the lessee yields up his interest under the lease to the lessor, by mutual agreement between them,
- (f) by implied surrender,
- (g) by forfeiture; that is to say, (1) in case the lessee breaks an express condition which provides that, on breach thereof, the lessor may re-enter; or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself; or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event; and in any of these cases the lessor or his transferee gives notice in writing to the lessee



of his intention to determine the lease,

(h) on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other.

Illustration to clause

(f) A lessee accepts from his lessor a new lease of the property leased, to take effect during the continuance of the existing lease. This is an implied surrender of the former lease, and such lease determines thereupon.

112. Waiver of forfeiture

A forfeiture under section 111, clause (g) is waived by acceptance of rent which has become due since the forfeiture, or by distress for such rent, or by any other act on the part of the lessor showing an intention to treat the lease as subsisting:

PROVIDED that the lessor is aware that the forfeiture has been incurred:

PROVIDED FURTHER that, where rent is accepted after the institution of a suit to eject the lessee on the ground of forfeiture, such acceptance is not a waiver.

114. Relief against forfeiture for non-payment of rent

Where a lease of immovable property has been determined by forfeiture for non-payment of rent, and the lessor sues to eject the lessee, if, at the hearing of the suit, the lessee pays or tenders to the lessor the rent in arrear, together with interest thereon and his full costs



of the suit, or gives such security as the court thinks sufficient for making such payment within fifteen days, the court may, in lieu of making a decree for ejectment, pass an order relieving the lessee against the forfeiture; and thereupon the lessee shall hold the property leased as if the forfeiture had not occurred.

114A. Relief against forfeiture in certain other cases

Where a lease of immovable property has been determined by forfeiture for a breach of an express condition which provides that on breach thereof the lessor may re-enter, no suit for ejectment shall lie unless and until the lessor has served on the lessee a notice in writing-

(a) specifying the particular breach complained of; and

(b) if the breach is capable of remedy, requiring the lessee to remedy the breach, and the lessee fails, within a reasonable time from the date of the service of the notice, to remedy the breach, if it is capable of remedy.

Nothing in this section shall apply to an express condition against the assigning, under-letting, parting with the possession, or disposing, of the property leased, or to an express condition relating to forfeiture in case of non-payment of rent."

73. The aforesaid provisions of the Transfer of Property Act, 1882 would show that determination of a lease has to take place as per the provisions contained under Section



111 of the Transfer of Property Act and any resumption of possession of the lease lands can only be done by taking recourse to the due process of law i.e. necessitating an eviction decree and execution thereof, however, there can be no forcible dispossession contrary to the law by assuming powers that the law does not vest in the Corporation in a relationship of lesser or lessee or sub-lessee. Thus, before exercising the right of resumption of possession of a leased land, lease is required to be first determined under Section 111 of the Transfer of Property Act and only thereafter, resumption of possession of a leased land can be done by taking recourse to the due process of law.

74. It is a well settled law that since the lease is a creation of the Transfer of Property Act, the same can only be cancelled and the possession of the plot can be resumed only by invoking the jurisdiction of the competent civil court by filing a suit and not by an executive order passed either by the Patna Municipal Corporation or by the Empowered Standing Committee, hence, on this ground as well, the impugned orders are fit to be set aside. Reference in this connection be had to the judgment rendered by the Hon'ble Apex Court in the case of ***Express Newspapers (P) Ltd. vs. Union of India***, reported in **(1986) 1 SCC 133**.

75. It is equally a well-settled law that when a property /



plot has been leased by a statutory authority, the Transfer of Property Act will squarely apply and therefore, any resumption of the possession of the leased lands can only be through the process of law necessitating an eviction decree and execution thereof and there cannot be any forcible dispossession, contrary to the law. Reference be had to a judgment reported in (2011) 3 PLJR 268 (**Naintara Sharma & Anr. vs. the State of Bihar & Ors.**).

76. In fact even a trespasser cannot be dispossessed without following the due process of law. Reference be had to a judgment reported in **AIR 1968 SC 620 (Lallu Yeshwant Singh v. Rao Jagdish Singh)**.

77. I would like to refer to a judgment dated 21.12.1994 rendered by the Hon'ble Division Bench of the Patna High Court in the case of **GAIT Public Library & Institute through its President vs. The State of Bihar & Ors.** (CWJC No. 2671 of 1994), reported in **(1995) 1 PLJR 585**, paragraphs no. 11 to 17 and 27 to 29 whereof are reproduced herein below:-

"11. From the facts, as stated above, it is clear that the lease of the Petitioner expired in the year 1945 and as such at present there is no valid lease existing with regard to the land in dispute. It is an also admitted position that prior to the passing of the impugned order and resumption and taking possession of the land, the same was in possession of the Petitioner. Even after expiry of the time of the lease the



Government granted aid to the Petitioner from time to time and appointed its nominee in the Managing Committee of the Petitioner (see Annexure-15 series and 16).

12. The only question which has to be answered in this case is as to whether the Respondent's action in resuming and taking possession of the land under Rule 21 of the Bihar Government Estates (Khas Mahal) Manual has any sanction in the eye of law.

13. In the case of **Midnapur Zamindary Co. Ltd. v. Naresh Narayan Roy, 51 Ind App. 293 at page 299** it was held by the Privy Council that "In India persons are not permitted to take forcible possession; they must obtain such possession as they are entitled to through a Court".

14. In the case of **Krishna Ram Mahale (dead) by his L.Rs. v. Mrs. Shobha Venkat Rao : A.I.R 1989 S.C. 2097**, it was held that it is well settled in this country that where a person is in settled possession of property, even on the assumption that he had no right to remain on the property, he cannot be dispossessed by the owner of the property except by recourse to law.

15. In the case of **State of U.P. and Ors. v. Maharaja Dharmender Prasad Singh etc. : A.I.R., 1989 S.C. 997**, it was held that though in exercise of power under Section 225 of the Constitution of India the Court cannot go into question as to whether forfeiture and cancellation of the lease is valid or not, it was observed that a lessor, with the best of title has



no right to resume possession extrajudicially by use of force, from a lessee, even after the expiry or earlier termination of the lease by forfeiture or otherwise. The use of the expression re-entry in the lease deed does not authorise extrajudicial methods to resume possession. Under law, the possession of lease, even after the expiry or its earlier termination is juridical possession and forcible dispossession is prohibited; a lessee cannot be dispossessed otherwise than in due course of law.

16. In **Civil Appeal No. 1024 of 1967 Mohan Lal v. The State of Punjab**, disposed of on **25.11.69** the **Apex Court** speaking through Hegde, J, observed that under our jurisprudence even an unauthorised occupant can be evicted only in the manner authorised by law. This is the essence of the rule of law. It was also observed that a person in unauthorised occupation of the suit premises can invoke the jurisdiction of the High Court under Articles 226 and 227 of the Constitution, if they are being evicted in a manner not authorised by law.

17. Thus, it is clear that if the lessee has remained in possession even after the expiry of the lease his possession is juridical possession and he can be evicted only according to the procedure known in law. He cannot be evicted forcibly or in any manner not authorised in law. No doubt, if there is a forfeiture and cancellation of the lease the matter cannot be agitated under Article 226 of the Constitution as the determination on the said point requires investigation as to factual matters and the writ



application would not be an appropriate remedy but even after cancellation of forfeiture of the lease the lessor can take possession only in a manner known or recognised by law. He cannot take possession by adopting a manner not authorised by law.

27. By the impugned order the State has attempted to take possession of the land in a purported exercise of Rule 21. It has no applicability in the case and as such the impugned order has no sanction in law and has to be quashed. The action of the Respondent State and the Collector and his Subordinate officers in taking forcible possession on the basis of the said order is also unauthorised. As stated above, the Petitioner is continuing in possession for more than 70 years over the land and has constructed building and the same is being used as a library and institute and for some other purpose also. Even after the expiry of the lease its possession is juridical one and that can be taken away only by the process known in law. The Respondents have no authority in law to resume and take possession of the land by virtue of an order which stated above is nonest in the eye of law. Accordingly, the impugned order is quashed and it is held that the act of the Respondents in taking possession of the land in question is unauthorised and arbitrary. In view of such high handed act on the part of the State and its officers this Court with a view to maintain majesty of law has to pass an order for restoration of possession of the Petitioner.



28. Accordingly, the impugned order contained in Annexure-7 is quashed and the Respondent Collector is directed to hand over the possession of the premises and all books with regard to which inventory has been prepared in pursuance of the order passed by this Court to the Petitioner within three weeks from today.

29. In the result the application is allowed with the aforesaid observation. In the facts and circumstances, Respondents are directed to pay a cost of Rs. 10,000/- to the Petitioner. The amount of cost should be spent by the library for purchasing books for the children."

78. Thus the contention of the Ld. Counsel for the respondents to the effect that since the petitioners have violated the terms and conditions of the lease deed in question inasmuch as not only a portion of the lease land has been transferred but the petitioners have also engaged in making construction for commercial purposes, hence, the lease in question has been rightly cancelled and the possession of land/under construction building has been validly resumed by the Municipal Commissioner, Patna Municipal Corporation, is misconceived and fit to be rejected, moreso in view of the Law laid down by the Hon'ble Apex Court in the cases of ***Express Newspapers (P) Ltd. (Supra), Lallu Yeshwant Singh (Supra), Krishna Ram Mahale (dead) by his L.Rs. (Supra) and State of U.P. and Ors. v. Maharaja Dharmander Prasad Singh (Supra)***.



79. The reliance of the Ld. Counsel for the respondents on a Judgment reported in (2018) 4 PLJR 411 (SC) [Dalip Singh & Ors. Vs. State of Haryana & Ors.] is also misplaced inasmuch as the same is not only distinguishable but has also got no applicability in the facts and circumstances of the present cases, apart from the fact that the said case pertains to allotment of industrial plot and is not a case of a registered lease and moreover, allotment has been made under a scheme for achieving rapid industrial growth under the provisions of Haryana Urban Development Authority (HUDA) Act, 1977. In fact under Section 17 of the HUDA Act, 1977 itself the power of resumption has been expressly vested in the estate officer unlike the present cases where the power to resume lies with the lessor i.e at present the Patna Municipal Corporation and there being no delegation made in this regard to the Municipal Commissioner, he is not competent to pass an order of resumption or determination of lease.

80. Having regard to the facts and circumstances of the case and for the grounds mentioned hereinabove, this Court finds that the impugned orders dated 16.07.2014, 01.08.2014 and 28.11.2014 passed by the Commissioner, Patna Municipal Corporation, whereby and whereunder the Commissioner, Patna Municipal Corporation, has directed for resuming the possession of the premises in question along with the under construction building, is illegal, beyond



the power vested with the Commissioner, Patna Municipal Corporation, de hors the provisions of law, as referred to hereinabove by this Court and contrary to the due process of law as also antithetical to the Law laid down by the Hon'ble Apex Court, hence, the order dated 16.07.2014 passed in Vigilance Case No. 118A of 2013, the order dated 01.08.2014 passed in Vigilance Case No. 99A of 2013 and the order dated 28.11.2014 passed in Vigilance Case No. 97A of 2013, by the Commissioner, Patna Municipal Corporation, Patna are set aside. Consequently, the respondent Patna Municipal Corporation, Patna is directed to hand over the possession of the premises in question along with the building constructed thereupon, to the petitioners forthwith.

81. Now coming to the factual aspect of each case vis-a-vis the impugned orders passed by the Commissioner, Patna Municipal Corporation, this Court would first deal with the writ petitions bearing CWJC No. 10975 of 2017 (Gajendra Mohan Mishra and Ors. Vs. The Patna Municipal Corporation and Ors.) and CWJC No. 7404 of 2017 (Prakash Kumar Vs. Patna Municipal Corporation through Municipal Commissioner and Ors.), which pertain to the same plot i.e. Plot No. 165B, Sri Krishnapuri, Patna. A bare perusal of the impugned order dated 01.08.2014 passed by the Commissioner, Patna Municipal Corporation, in Vigilance Case No. 99A of 2013, would show that the following irregularities/illegalities have been taken into account by the learned Commissioner, Patna Municipal Corporation for passing the impugned order dated 1.8.2014, which are summarized herein below:-

(i) The map is forged.



(ii) The inspection committee has found irregularities, contraventions, breaches and deviations in the building constructed over the land in question.

(iii) Despite the order dated 10.05.2013 passed by the Hon'ble High Court in CWJC No. 8152 of 2013, the construction work had continued and was not stopped.

(iv) The approval of the map has been obtained in an illegal manner, even with regard to the additional portion of land over and above the allotted land.

(v) A commercial building was being constructed contrary to the terms and conditions of the lease deed.

(vi) Sections 313, 315 and 325 of the Bihar Municipal Act, 2007 have been contravened.

(vii) The petitioners have contravened/violated the terms and conditions of the lease deed.

(viii) The map stated to have been approved on 30.04.2009 does not bear the signature of Assistant Engineer and Office Assistant, apart from the fact that the issue register depicts that on 24.02.2010, no map was issued, thus it is clear that the map in question is forged. A report regarding the file of the map in question was also obtained from the Executive Engineer from which it is apparent that the builder had illegally got the map revalidated, which was/is not fit to be sanctioned.

(ix) The petitioners have further contravened the terms and conditions of the lease inasmuch as the land allotted by Patna Improvement Trust has been transferred by a development



agreement and 50% of the build up area of the commercial building has been agreed to be conveyed / transferred / assigned to the developers by the owners of the land in question by means of a development agreement.

82. This Court finds that as far as the aforesaid issues are concerned, the factual aspect has been dealt with elaborately hereinabove in the preceding paragraphs while dealing with the facts of the case of the writ petitions bearing CWJC No. 10975 of 2017 and CWJC No. 7404 of 2017 as also while noting the submissions advanced by the learned Senior Counsels for the petitioners in the said two cases hereinabove in the preceding paragraphs and it is apparent from a bare perusal of the facts stated and the documents produced by the petitioners of the said two cases that the case, as set forth by the petitioners, cannot be brushed aside casually and in fact, they definitely have an arguable case, which would be apparent from a brief encapsulation of the contentions / response of the petitioners (serially), to the aforesaid irregularities/illegalities which have been taken into account by the Commissioner, Patna Municipal Corporation, in the impugned order dated 01.08.2014, herein below:-

(i) and (iv) A plot bearing no. 165 at Mohalla- Sri Krishna Puri, Type-B, ad-measuring 784.56 sq. yards was allotted to late Justice Gobind Mohan Mishra and the said land was settled in his favour for a



period of 99 years on lease by the erstwhile Board of Trustees of Patna Improvement Trust by a registered lease deed dated 20.02.1967. In the year 1980, the PRDA had offered an additional area of 1406 sq. feet (156.22 sq. yards), lying contiguous east to the demised premises, to the father of the petitioners, which was allotted vide letter dated 16.06.1980, and the consideration money thereof was also paid, whereafter the said additional area was also settled in favor of the father of the petitioners, duly communicated vide letter dated 25.8.1980. After settlement of the additional area with the lessee, a modified building plan was submitted by the lessee on 24.06.1980, which was processed vide Case No. 537 of 1980 and the then Vice Chairman of the PRDA had granted sanction on 01.08.1980. The said building plan, which was sanctioned by the PRDA, consisted of the original allotted area of 785.36 sq. yards plus the area of 1406 sq. feet, allotted later on. After three years, when the aforesaid sanction plan dated 01.08.1980 had expired, the same was submitted for revalidation and the map was revalidated on 16.02.1984 by the then Vice Chairman, PRDA, Patna, thus, the original lessee became owner of 8591.4 sq. feet of land. Subsequently, the original lessee died on 29.11.1994 and his wife also died on 8.7.2005, leading to the names of petitioners herein (three sons of the original lessee) being mutated by the respondent Municipality, after grant of approval by the Municipal Commissioner.

After declaration of 300 feet wide stretch on Boring Road as commercial area, the petitioners decided to construct a commercial complex over



the vacant portion of their land, which was in addition to the pre-existing residential portion, comprising of three flats as also they further decided to construct additional flats on the pre-existing residential portion by constructing three additional residential flats for residential purposes. Accordingly, a combined modified building plan, containing provision for construction of commercial portion in the vacant portion and for construction of additional flats on the existing residential portion, was prepared by the authorized Engineer / Architect of the builder and was submitted by the builder / developer for approval and sanction with the Municipal authorities and the same was received and registered as Building Plan Case No. P/S.K Puri/ P.C. No./B+G+6-537 of 1980. The said plan was duly enquired into and verified, whereafter sanction was accorded by the then Commissioner, Patna Municipal Corporation, on 30.04.2009. In fact, the Fire Officer, Bihar, Patna had also given its no objection certificate dated 08.06.2009. Subsequently, the residential portion and commercial portion of the building in question, falling in the share of the petitioners, were also assessed to tax by the Patna Municipal Corporation and tax receipts were also issued, after approval was granted by the then Patna Municipal Commissioner on 08.09.2012.

The petitioners have also brought on record copy of the note-sheets containing the recommendation and sanction of the then Commissioner dated 30.04.2009 qua the modified building plan.

(ii) and (vi) As regards the alleged deviation and other deficiencies pointed out in the report



submitted by the Vigilance Officer and considered in the impugned order dated 01.08.2014, reference has been made to Clause 7.1 of the bye-laws, which reads as follows:-

“7.1. Applications for development or re-development of land or erection, re-erection or making material alteration of the buildings shall be submitted to the Authority. The Authority shall verify the fact given in the application and Annexure from technical, administrative and legal point of view. The title of land shall be verified. The Authority shall ensure that adequate guarantee has been obtained from the owner for carrying out the building activity as per specification prescribed (see Bye-laws no. 5.5). The Authority may either sanction or refuse the proposal or may sanction therewith such modifications or directions as it may deem necessary and thereupon shall communicate the decision to the owner as in proforma given in Appendix-E.”

It has been thus stated by the petitioners that it was incumbent on the respondent authorities to suggest amendment, modification and / or to reject the modified building plan but having not done so, the Municipal Commissioner by the impugned order dated 01.08.2014 could not have taken an adverse view of the matter.

(iii) As far as the order dated 10.05.2013 passed by a learned Division Bench of this Court in CWJC No. 8152 of 2013 is concerned, it has been stated by the petitioners that firstly, the petitioners were not parties to the said writ petition and secondly, the learned Division Bench of this Hon'ble Court



had vide order dated 10.05.2013 directed the Respondent-Corporation and the Registrar Cooperative Society to ensure that no new commercial construction or commercial / non-residential activity is allowed to start afresh on a residential plot in view of Section 338 and 342 of the Act and the said order dated 10.05.2013 also included not only the proposed constructions but also the ongoing constructions, however, such commercial and non-residential constructions, which had already been occupied and were fully operational, were excluded from the purview of the said order dated 10.05.2013. Thus, it has been stated by the petitioners that since the ground floor, first floor and second floor of the commercial complex on the plot in question had already been completed and had been handed over and occupied by HDFC Bank under an indenture of lease dated 16.01.2013 i.e. prior to the aforesaid order dated 10.05.2013, the premises of the petitioners in question stood excluded from the aforesaid order dated 10.05.2013.

(v) The petitioners were granted sanction for commercial use as per the modified / revised map / building plan dated 30.04.2009, which continued till 01.08.2014, hence it cannot be said that by using the land for commercial purpose, the stipulations contained in the lease deed in question has been violated.

Moreover, in terms of Clause (g) of Section 111 read with Section 112 of the Transfer of Property Act, 1882, the Municipal Corporation would be deemed to have waived right if any vested in them for forfeiture of lease because they have accepted



the holding Tax at the commercial rate from the petitioner.

(vii) The petitioners have stated that there has been no breach/ contravention/ violation of the terms and conditions of the lease deed in question by them. Nonetheless, it has been stated that even in cases of breach of any of the provisions of the Patna Improvement Trust (Disposal of Land) Rules, 1957 as well as in cases of breach of the provisions of the lease, as per Rule 21(2) of the said Rules 1957, only the Trust of Patna Improvement Trust has the power to resume the possession of land and not the Chairman of the Patna Improvement Trust, therefore, as on day, since the Patna Municipal Corporation has stepped into the shoes of the Trust of Patna Improvement Trust, only the Patna Municipal Corporation has the power to resume the land in question and not the Commissioner, Patna Municipal Corporation.

It has also been stated that since lease is a creation of the Transfer of Property Act, the same can only be cancelled and the possession of the plot can be resumed only by invoking the jurisdiction of the competent civil court by filing a suit and not by an executive order passed either by the Patna Municipal Corporation or by the Empowered Standing Committee, hence, on this ground as well, the impugned order is fit to be set aside. Reference in this connection has been made to the judgment rendered by the Hon'ble Apex Court in the case of ***Express Newspapers (P) Ltd. vs. Union of India***, reported in ***(1986) 1 SCC 133***.

It has also been submitted that when a



property / plot has been leased by a statutory authority, the Transfer of Property Act will squarely apply and therefore, any resumption of the possession of the leased lands can only be through the process of law necessitating an eviction decree and execution thereof and there cannot be any forcible dispossession, contrary to the law. Reference has been made to a judgment reported in (2011) 3 PLJR 268 (**Naintara Sharma & Anr. vs. the State of Bihar & Ors.**).

The petitioners have further stated that even a trespasser cannot be dispossessed without following the due process of law. Reference has been made to a judgment, reported in **AIR 1968 SC 620**.

It has also been submitted that the Chief Municipal Officer (Commissioner) is only empowered to take action in case, a building is being constructed without a sanctioned map or is being constructed in violation of the approved map, as is clear from Chapter XXXVI of the Bihar Municipal Act, 2007.

(viii) Refer to the submissions recorded at Sl. (i) above. It is further submitted that the impugned Order dated 01.08.2014 has been passed in violation of the principles of natural justice inasmuch as the petitioners have neither been supplied with the copy of the report of the enquiry Jachdal no. 2 with regard to the construction work on plot no. 165B, Sri krishna Puri, Patna nor with the details about the information gathered by the Executive Officer, Nutan Rajdhani Anchal nor with the report obtained from the Executive Engineer regarding the file of the map in question and



instead the said ex parte enquiry reports have been used against the petitioners.

(ix) The petitioners have referred to the Patna Improvement Trust (Disposal of Land) Rules, 1957 (herein after referred to as the "Rules 1957"), particularly Rule 19 thereof, which is reproduced herein below:-

“19. Transfer of land leased or sold by the Trust- No plot or part thereof leased or sold by the Trust shall be transferred by sale or gift within a period of ten years from the date of lease or sale without the permission of the Trust.”

Thus it has been submitted that if the said Rule 19 of the Rules, 1957 is read with Clause 12 of the lease deed in question, it provides that except with the previous consent of the Trust, the lessee shall have no right within ten years of the date of the said lease to transfer by way of sale, exchange or otherwise the aforesaid plot including the structures constructed thereon or the right, title or interest therein, but no such consent shall be required in matters of gift in favour of an heir or relation or of Will in respect of the said properties. Thus it is apparent that only in cases of transfer by the lessee within ten years of the lease, prior permission of the authorities of the Trust is required. By virtue of the provisions contained in the lease deed, after expiry of 10 years, a vested right accrues to the lessee.

The petitioners have also referred to Section 93(2)(i) of the Bihar Regional Development Authority Act, 1981, which is reproduced herein below:-



“all lands within the area notified under Section 1 held by any person as lessee from the Improvement Trust or Town Planning Authority under a registered deed or lease for residential purpose (and not for commercial purpose or commercial-cum-residential purpose) shall be deemed to be vested in him as perpetual leases from generation to generation on payment of fee to the Authority at the rate of one rupee per square meter.”

It is thus submitted that any plot held by any person as lessee from the Improvement Trust under a registered deed of lease for residential purpose would be deemed to be vested in such person / lessee as a perpetual lease from generation to generation.

It has also been contended that part transfer is not considered a violation of the terms of the lease unless and until specifically restricted. The Hon’ble Apex Court in a judgment reported in **(2002) 2 SCC 624 (Raghuram Rao vs. Eric P. Mathias)** has categorically held that the lease being the document prepared by the lessor, its terms have to be construed strictly against the lessor and where the terms of the lease does not expressly restrict part transfer of the plot and only restricts transfer of entire plot, transfer of part of the demised plot is not a violation of the express terms of lease.

83. This Court further finds that the Commissioner, Patna Municipal Corporation, in the impugned order dated 01.08.2014, has merely quoted passages from the various replies / written submissions filed by the petitioners in the



ongoing Vigilance Case No. 99A of 2013, however, he has failed to either deal with the same or respond to the same or discuss the same so as to come to a just legal and a reasoned finding, hence, this Court finds that the impugned order dated 01.08.2014 is wholly unreasoned and does not deal with the replies / written submissions of the petitioners though reproduced in the impugned order dated 01.08.2014 and moreover, no cogent, clear and succinct reasons have been furnished in support of the impugned order dated 01.08.2014, which is an indispensable component of a decision making process, hence, the impugned order dated 01.08.2014 stands vitiated, thus, this Court has no option but to quash the impugned order dated 01.08.2014 on this ground as well, especially in view of the said issue being squarely covered by the principles of law laid down by the Hon'ble Apex Court in the case of ***ORYX Fisheries (P) Ltd. Vs. Union of India***, reported in ***(2010) 13 SCC 427***, paragraphs no. 25 to 26, 32, 35 to 36 and 39 to 41 whereof are reproduced herein below:-

"**25.** Expressions like "a reasonable opportunity of making objection" or "a reasonable opportunity of defence" have come up for consideration before this Court in the context of several statutes. A Constitution Bench of this Court in *Khem Chand v. Union of India* [AIR 1958 SC 300], of course in the context of service jurisprudence, reiterated certain principles which are applicable in the present



case also.

26. S.R. Das, C.J. speaking for the unanimous Constitution Bench in *Khem Chand* [AIR 1958 SC 300] held that the concept of “reasonable opportunity” includes various safeguards and one of them, in the words of the learned Chief Justice, is: (AIR p. 307, para 19)

“(a) An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based;”

32. Therefore, while issuing a show-cause notice, the authorities must take care to manifestly keep an open mind as they are to act fairly in adjudging the guilt or otherwise of the person proceeded against and specially when he has the power to take a punitive step against the person after giving him a show-cause notice.

35. Going by the aforesaid test any man of ordinary prudence would come to a conclusion that in the instant case the alleged guilt of the appellant has been prejudged at the stage of show-cause notice itself.

36. The appellant gave a reply to the show-cause notice but in the order of the third respondent by which registration certificate of the appellant was cancelled, no reference was made to the reply of the appellant, except saying that it is not satisfactory. The



cancellation order is totally a non-speaking one. The relevant portion of the cancellation order is set out:

"Sub.: Registration as an Exporter of Marine Products under the MPEDA Rules, 1972.

Please refer to Show-Cause Notice No. 10/3/MS/2006/MS/ 3634 dated 23-1-2008 acknowledged by you on 28-1-2008 directing you to show cause why the certificate of registration as an exporter, No. MAI/ME/119/06 dated 3-3-2006 granted to you as merchant exporter should not be cancelled for the following reasons:

- 1. It has been proved beyond doubt that you have sent sub-standard material to M/s Cascade Marine Foods, LLC, Sharjah.*
- 2. You have dishonoured your written agreement with M/s Cascade Marine Foods, LLC, Sharjah to settle the complaint made by the buyer as you had agreed to compensate to the extent of the value of the defective cargo sent by you and have now evaded from the responsibility.*
- 3. This irresponsible action has brought irreparable damage to India's trade relation with UAE.*

Your reply dated 4-2-2008 to the show-cause notice is not satisfactory because the quality complaint raised by M/s Cascade Marine Foods, LLC, Sharjah have not been resolved amicably. Therefore, in exercise of



the power conferred on me vide Rule 43 of the MPEDA Rules, read with Office Order Part II No. 1840/2005 dated 25-11-2006, I hereby cancel Registration Certificate No. MAI/ME/119/06 dated 3-3-2006 issued to you. The original certificate of registration issued should be returned to this office for cancellation immediately.

In case you are aggrieved by this order of cancellation, you may prefer an appeal to the Chairman within 30 days of the date of receipt of this order vide Rule 44 of the MPEDA Rules.”

(emphasis supplied)

39. On the requirement of disclosing reasons by a quasi-judicial authority in support of its order, this Court has recently delivered a judgment in *Kranti Associates (P) Ltd. v. Masood Ahmed Khan* [(2010) 9 SCC 496 : (2010) 3 SCC (Civ) 852] on 8-9-2010.

40. In *Kranti Associates* [(2010) 9 SCC 496 : (2010) 3 SCC (Civ) 852] this Court after considering various judgments formulated certain principles in SCC para 47 of the judgment which are set out below: (SCC pp. 510-12)

“(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record



reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these



decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in *Defence of Judicial Candor*(1987) 100 Harv. L. Rev. 731-37.)

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said



requirement is now virtually a component of human rights and was considered part of *Strasbourg Jurisprudence*. See *Ruiz Torija v. Spain* [(1994) 19 EHRR 553] , EHRR at p. 562, para 29 and *Anya v. University of Oxford* [2001 EWCA Civ 405 : 2001 ICR 847 (CA)] , wherein the Court referred to Article 6 of the European Convention of Human Rights which requires, 'adequate and intelligent reasons must be given for judicial decisions'.

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of 'due process'."

41. In the instant case the appellate order contains reasons. However, absence of reasons in the original order cannot be compensated by disclosure of reason in the appellate order."

84. Now coming to the writ petition bearing CWJC No. 6546 of 2017 (Sanjay Singh vs. Patna Municipal Corporation & Ors.), which pertains to Plot No. 134/B, Sri Krishnapuri, Patna, a bare perusal of the impugned order dated 28.11.2014 passed by the Commissioner, Patna Municipal Corporation, in Vigilance Case No. 97A of 2013, would show that the following irregularities/illegalities have been taken into account by the learned Commissioner, Patna Municipal Corporation for passing the same, which are summarized



herein below:-

(i) The map has been approved/sanctioned for construction of a building for residential use.

(ii) The inspection committee has found irregularities, contraventions, breaches and deviations in the building constructed over the land in question.

(iii) It has been found upon inquiry that additional land has been encroached.

(iv) As per the no objection certificate dated 21.12.2011, issued by the Patna Municipal Corporation to the petitioner, approval was granted to construct residential building for family use, however, upon looking at the nature of construction in progress, it is apparent that the construction is not being carried out for family use.

(v) The development agreement shows that the owner and the developer will share the constructed building in the ratio of 50% : 50% and the showroom area will fall within the share of the owner, thus, it is clear that not only the leased land has been sought to be transferred, but has been proposed to be used for commercial purposes resulting in contravention of the terms and conditions of the lease deed in question.

(vi) The owner of the leased land has deliberately concealed the identity of the builder / developer.

(vii) The petitioner has contravened/violated the terms and conditions of the lease deed.

85. This Court finds that as far as the aforesaid issues are



concerned, the factual aspect has been dealt with elaborately hereinabove in the preceding paragraphs while dealing with the facts of the case of the writ petition bearing CWJC No. 6546 of 2017 as also while noting the submissions advanced by the learned Counsel for the petitioner hereinabove in the preceding paragraphs and it is apparent from a bare perusal of the facts stated and the documents produced by the petitioner of the said case that the case, as set forth by the petitioner, cannot be brushed aside casually and in fact, he definitely has an arguable case, which would be apparent from a brief encapsulation of the contentions / response of the petitioner (serially), to the aforesaid irregularities/ illegalities which have been taken into account by the Commissioner, Patna Municipal Corporation, in the impugned order dated 28.11.2014, herein below:-

(i) (iii) and (iv) The petitioner had given an application to the Municipal Commissioner vide letter dated 12.8.2011 for the purposes of issuance of no objection certificate for passing of the map for reconstruction of residential building, whereafter vide letter no. 5021 dated 21.12.2011, no objection certificate was given by the Municipal Commissioner, Patna Municipal Corporation, to construct a residential building as per the provisions contained in the Building Bye-laws and after sanction of the map by the listed approved Architect and according to the terms and conditions of the lease deed.



The petitioner has stated that the construction of the building in question over Plot No. 134/B, Sri Krishnapuri, Patna, is being done, specifically as per the map sanctioned by the Patna Municipal Corporation for residential purposes only, after N.O.C. has been given by the Corporation and the building map has been approved by the certified Architect of the Patna Municipal Corporation. It has also been stated that no additional land has been encroached.

In fact it is the undertaking of the petitioner that the building in question has been constructed to be used for residential purposes only and moreover, the entire construction has been done according to the sanctioned plan, after due approval. This undertaking of the petitioner can be found at running page no. 180 of the brief i.e. internal page no. 5 of the reply to the counter affidavit on behalf of the petitioner, filed on 10.04.2018. It is thus submitted that the allegation regarding the change in use of the land in question from residential to commercial is not correct.

(ii) As regards the alleged deviation and other deficiencies, reference has been made to Clause 7.1 of the bye-laws, which reads as follows:-

“7.1. Applications for development or re-development of land or erection, re-erection or making material alteration of the buildings shall be submitted to the Authority. The Authority shall verify the fact given in the application and Annexure from technical, administrative and legal point of view. The title of land shall be verified. The Authority shall ensure that adequate guarantee has been obtained from the



owner for carrying out the building activity as per specification prescribed (see Bye-laws no. 5.5). The Authority may either sanction or refuse the proposal or may sanction therewith such modifications or directions as it may deem necessary and thereupon shall communicate the decision to the owner as in proforma given in Appendix-E."

It has been thus stated by the petitioner that it was incumbent on the respondent authorities to suggest amendment, modification and / or to reject the approved building plan but having not done so, the Municipal Commissioner by the impugned order dated 28.11.2014 could not have taken an adverse view of the matter.

(v) and (vi) The petitioner has denied that owner of the leased land has deliberately concealed the identity of the builder / developer.

It is stated that the construction of the building in question is being done, specifically as per the map sanctioned by the Patna Municipal Corporation for residential purposes only. The petitioner has also undertaken that the building in question will be used only for residential purposes.

The petitioner has referred to the PIT Trust (Disposal of Land) Rules, 1957 (herein after referred to as the "Rules 1957"), particularly Rule 19 thereof. The petitioner has also referred to Section 93(2)(i) of the Bihar Regional Development Authority Act, 1981, which is reproduced herein below:-

"all lands within the area notified under Section 1 held by any person as lessee from the Improvement Trust or Town Planning Authority under a registered deed or lease for



residential purpose (and not for commercial purpose or commercial-cum-residential purpose) shall be deemed to be vested in him as perpetual leases from generation to generation on payment of fee to the Authority at the rate of one rupee per square meter.”

It is thus submitted that any plot held by any person as lessee from the Improvement Trust under a registered deed of lease for residential purpose would be deemed to be vested in such person / lessee as a perpetual lease from generation to generation.

It has also been contended that part transfer is not considered a violation of the terms of the lease unless and until specifically restricted. The Hon’ble Apex Court in a judgment reported in **(2002) 2 SCC 624 (Raghuram Rao vs. Eric P. Mathias)** has categorically held that the lease being the document prepared by the lessor, its terms have to be construed strictly against the lessor and where the terms of the lease does not expressly restrict part transfer of the plot and only restricts transfer of entire plot, transfer of part of the demised plot is not a violation of the express terms of lease.

(vii) The petitioner has stated that there has been no breach/ contravention/ violation of the terms and conditions of the lease deed in question by them. Nonetheless, it has been stated that even in cases of breach of any of the provisions of the Patna Improvement Trust (Disposal of Land) Rules, 1957 as well as in cases of breach of the provisions of the lease, as per Rule 21(2) of the said Rules 1957, only the Trust of Patna Improvement Trust



has the power to resume the possession of land and not the Chairman of the Patna Improvement Trust, therefore, as on day, since the Patna Municipal Corporation has stepped into the shoes of the Trust of Patna Improvement Trust, only the Patna Municipal Corporation has the power to resume the land in question and not the Commissioner, Patna Municipal Corporation.

It has also been stated that since lease is a creation of the Transfer of Property Act, the same can only be cancelled and the possession of the plot can be resumed only by invoking the jurisdiction of the competent civil court by filing a suit and not by an executive order passed either by the Patna Municipal Corporation or by the Empowered Standing Committee, hence, on this ground as well, the impugned order is fit to be set aside. Reference has been made to the judgment rendered by the Hon'ble Apex Court in the case of ***Express Newspapers (P) Ltd. (Supra)***.

It has also been submitted that when a property / plot has been leased by a statutory authority, the Transfer of Property Act will squarely apply and therefore, any resumption of the possession of the leased lands can only be through the process of law necessitating an eviction decree and execution thereof and there cannot be any forcible dispossession, contrary to the law. Reference has been made to a judgment reported in (2011) 3 PLJR 268 [***Naintara Sharma & Anr. (Supra)***].

The petitioner has further stated that even a trespasser cannot be dispossessed without following the due process of law. Reference has



been made to a judgment, reported in **AIR 1968 SC 620.**

It has also been submitted that the Chief Municipal Officer (Commissioner) is only empowered to take action in case, a building is being constructed without a sanctioned map or is being constructed in violation of the approved map, as is clear from Chapter XXXVI of the Bihar Municipal Act, 2007.

86. This Court further finds that the Commissioner, Patna Municipal Corporation, in the impugned order dated 28.11.2014, has merely quoted passages from the various replies / written submissions filed by the petitioners in the ongoing Vigilance Case No. 97A of 2013, however, he has failed to either deal with the same or respond to the same or discuss the same so as to come to a just legal and a reasoned finding, hence, this Court finds that the impugned order dated 28.11.2014 is wholly unreasoned and does not deal with the replies / written submissions of the petitioner though reproduced in the impugned order dated 28.11.2014 and moreover, no cogent, clear and succinct reasons have been furnished in support of the impugned order dated 28.11.2014, which is an indispensable component of a decision making process, hence, the impugned order dated 28.11.2014 stands vitiated, thus, this Court has no option but to quash the impugned order dated 28.11.2014 on this ground as well, especially in view of the said issue being squarely covered by the principles of



law laid down by the Hon'ble Apex Court in the case of **ORYX Fisheries (P) Ltd.** (*Supra*).

87. Now coming to the last case i.e. CWJC No. 2432 of 2017 (Smt. Arti Banerjee @ Arati Banerjee vs. Patna Municipal Corporation & Ors.), which pertain to Plot No. 215/A, Sri Krishnapuri, Patna, a bare perusal of the impugned order dated 16.07.2014 passed by the Commissioner, Patna Municipal Corporation, in Vigilance Case No. 118A of 2013, would show that the following irregularities/illegalities have been taken into account by the learned Commissioner, Patna Municipal Corporation for passing the same, which are summarized herein below:-

- (i) The inspection committee has found irregularities, contraventions, breaches and deviations in the building constructed over the land in question.
- (ii) The set back on the front side, back side as well as on both the sides are less than the prescribed dimensions.
- (iii) The petitioner has encroached additional land than the allotted area of land.
- (iv) Construction has been made by increasing the FAR steeply.
- (v) The height of construction is more than the approved height.
- (vi) According to the no objection certificate granted to the petitioner vide letter dated 21.12.2011, the petitioner was granted permission to construct residential building for family use, however, upon perusal of the map



in question, it appears that the construction is not for family use, but it appears that the construction is for the purposes of commercial use and for construction of flats for the purposes of sale, thus the same not only amounts to contravention of the terms and conditions of the lease deed but also amounts to violation of the NOC dated 21.12.2011.

(vii) A perusal of the development agreement entered into between the petitioner and the builder shows that owner's share would be 50% of the total constructed portion of the multi storied residential building and 50% would go to the share of the developer, thus, it is apparent that the plot in question would be divided into several shares.

(viii) The Patna Municipal Corporation has not granted approval/ sanction of the map pertaining to the construction sought to be made.

88. This Court finds that as far as the aforesaid issues are concerned, the factual aspect has been dealt with elaborately hereinabove in the preceding paragraphs while dealing with the facts of the case of the writ petition bearing CWJC No. 2432 of 2017 as also while noting the submissions advanced by the learned Counsel for the petitioner hereinabove in the preceding paragraphs and it is apparent from a bare perusal of the facts stated and the documents produced by the petitioner of the said case that the case, as set forth by the petitioner, cannot be brushed aside casually and in fact, she definitely has an arguable



case, which would be apparent from a brief encapsulation of the contentions / response of the petitioner (serially), to the aforesaid irregularities/ illegalities which have been taken into account by the Commissioner, Patna Municipal Corporation, in the impugned order dated 16.07.2014, herein below:-

(i), (ii), (iii), (iv) and (v) As regards the alleged deviation and other deficiencies pointed out in the report of inspection committee and considered in the impugned order dated 01.08.2014, reference has been made to Clause 7.1 of the bye-laws, which reads as follows:-

“7.1. Applications for development or re-development of land or erection, re-erection or making material alteration of the buildings shall be submitted to the Authority. The Authority shall verify the fact given in the application and Annexure from technical, administrative and legal point of view. The title of land shall be verified. The Authority shall ensure that adequate guarantee has been obtained from the owner for carrying out the building activity as per specification prescribed (see Bye-laws no. 5.5). The Authority may either sanction or refuse the proposal or may sanction therewith such modifications or directions as it may deem necessary and thereupon shall communicate the decision to the owner as in proforma given in Appendix-E.”

It has been thus stated by the petitioners that it was incumbent on the respondent authorities to suggest amendment, modification and / or to reject



the modified building plan but having not done so, the Municipal Commissioner by the impugned order dated 01.08.2014 could not have taken an adverse view of the matter.

In the year 2011-12, the petitioner had decided to reconstruct the building over the plot in question inasmuch as the previous construction had become old and unsafe, hence had applied for planning report and the same was issued vide memo no. 4633 dated 3.6.2011. Thereafter, the petitioner had applied for issuance of a no objection certificate on 30.07.2011, which was accordingly issued vide letter no. 5022 dated 21.12.2011. A plan of the proposed building is then stated to have been prepared and submitted by the empanelled / registered and certified Architect of the Corporation, namely, Sri Rakesh Ranjan on 19.1.2012 vide Plan Case No. CA/86/9665/ 29/2009-10/PMC-34/2011. It is stated that the residential building in question is being constructed as per the approved and sanctioned building plan over the plot in question.

(vi) and (viii) It is stated that the residential building in question is being constructed as per the approved and sanctioned building plan over the plot in question. In fact it is the undertaking of the petitioner that the building in question has been constructed to be used for residential purposes only and moreover, the entire construction has been done according to the sanctioned plan, after due approval. This undertaking of the petitioner can be found at running page no. 104 of the brief i.e. para No. 6 at internal page no. 2 of the reply to counter affidavit on behalf of the petitioner, filed on



10.04.2018. It is thus submitted that the allegations regarding the change in use of the land in question from residential to commercial as also regarding contravention of the terms and conditions of the lease deed and the NOC dated 21.12.2011, are not correct. It is also submitted that it is wrong to say that the Patna Municipal Corporation has not granted approval/ sanction of the map pertaining to the construction sought to be made.

(vii) The petitioners have referred to the Patna Improvement Trust (Disposal of Land) Rules, 1957 (herein after referred to as the "Rules 1957"), particularly Rule 19 thereof, which is reproduced herein below:-

“19. Transfer of land leased or sold by the Trust- No plot or part thereof leased or sold by the Trust shall be transferred by sale or gift within a period of ten years from the date of lease or sale without the permission of the Trust.”

Thus it has been submitted that if the said Rule 19 of the Rules, 1957 is read with Clause 12 of the lease deed in question, it provides that except with the previous consent of the Trust, the lessee shall have no right within ten years of the date of the said lease to transfer by way of sale, exchange or otherwise the aforesaid plot including the structures constructed thereon or the right, title or interest therein, but no such consent shall be required in matters of gift in favour of an heir or relation or of Will in respect of the said properties. Thus it is apparent that only in cases of transfer by the lessee within ten years of the lease, prior permission of the authorities of the Trust is



required. By virtue of the provisions contained in the lease deed, after expiry of 10 years, a vested right accrues to the lessee.

The petitioners have also referred to Section 93(2)(i) of the Bihar Regional Development Authority Act, 1981, which is reproduced herein below:-

“all lands within the area notified under Section 1 held by any person as lessee from the Improvement Trust or Town Planning Authority under a registered deed or lease for residential purpose (and not for commercial purpose or commercial-cum-residential purpose) shall be deemed to be vested in him as perpetual leases from generation to generation on payment of fee to the Authority at the rate of one rupee per square meter.”

It is thus submitted that any plot held by any person as lessee from the Improvement Trust under a registered deed of lease for residential purpose would be deemed to be vested in such person / lessee as a perpetual lease from generation to generation.

It has also been contended that part transfer is not considered a violation of the terms of the lease unless and until specifically restricted. The Hon'ble Apex Court in a judgment reported in **(2002) 2 SCC 624 (Raghuram Rao vs. Eric P. Mathias)** has categorically held that the lease being the document prepared by the lessor, its terms have to be construed strictly against the lessor and where the terms of the lease does not expressly restrict part transfer of the plot and only restricts transfer of entire plot, transfer of part of



the demised plot is not a violation of the express terms of lease.

89. This Court further finds that the Commissioner, Patna Municipal Corporation, in the impugned order dated 16.07.2014, has merely quoted passages from the various replies / written submissions filed by the petitioner in the ongoing Vigilance Case No. 118A of 2013, however, he has failed to either deal with the same or respond to the same or discuss the same so as to come to a just legal and a reasoned finding, hence, this Court finds that the impugned order dated 16.07.2014 is wholly unreasoned and does not deal with the replies / written submissions of the petitioner though reproduced in the impugned order dated 16.07.2014 and moreover, no cogent, clear and succinct reasons have been furnished in support of the impugned order dated 16.07.2014, which is an indispensable component of a decision making process, hence, the impugned order dated 16.07.2014 stands vitiated, thus, this Court has no option but to quash the impugned order dated 16.07.2014 on this ground as well, especially in view of the said issue being squarely covered by the principles of law laid down by the Hon'ble Apex Court in the case of **ORYX Fisheries (P) Ltd.** (*Supra*).

90. Since the original order dated 28.11.2014 passed in Vigilance Case No. 97A of 2013, order dated 16.07.2014 passed in Vigilance Case No. 118A of 2013 and the order



dated 01.08.2014 passed in Vigilance Case No. 99A of 2013, by the Commissioner, Patna Municipal Corporation, have already stood quashed, consequently, the appellate order dated dated 23.03.2017 passed in Appeal No. 137 of 2014, order dated 28.12.2016 passed in Appeal Case No. 28 of 2014, order dated 02.03.2017 passed in Appeal Case No. 46 of 2014 and order dated 1.3.2017 passed in Appeal No. 68 of 2014, by the Municipal Building Tribunal, Patna, have no legs to stand and are bound to fall, thus, are accordingly quashed. In this connection reference be had to a Judgment rendered by the Hon'ble Apex Court in the case of **State of Punjab v. Davinder Pal Singh Bhullar**, reported in **(2011) 14 SCC 770**.

91. The writ petitions stand allowed, however, without order as to costs, but with liberty to the petitioners to seek compensation / damages for the loss or injury caused to them on account of the illegal act of the respondents by taking recourse to appropriate remedy available under the law.

(Mohit Kumar Shah, J)

Ajay/-

AFR/NAFR	AFR
CAV DATE	09.09.2019
Uploading Date	04.11.2020
Transmission Date	NA

