

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 900 of 2020

1. Smt. Indu Prasad, aged about 74 years, Gender-Female, Wife of Late Dharendra Narayan Prasad @ D.N. Prasad, resident of Panchvati, Plot No. 30, Kadamkuan Khas Mahal Park Road, P.S. Kadamkuan, District- Patna.
2. Amulya Prasad, aged about 46 years, Gender-Male, Son of Late Dharendra Narayan Prasad @ D.N. Prasad, resident of Panchvati, Plot No. 30, Kadamkuan Khas Mahal Park Road, P.S. Kadamkuan, District- Patna.
3. Amrita Prasad, aged about 45 years, Gender-Female, Daughter of Late Dharendra Narayan Prasad @ D.N. Prasad, resident of Panchvati, Plot No. 30, Kadamkuan Khas Mahal Park Road, P.S. Kadamkuan, District- Patna.
4. Amit Narayan Prasad, aged 42 years, Gender-Male, Son of Late Dharendra Narayan Prasad @ D.N. Prasad, resident of Panchvati, Plot No. 30, Kadamkuan Khas Mahal Park Road, P.S. Kadamkuan, District- Patna.
5. Abhishek Raj, aged about 38 years, Gender-Male, Son of Late Dharendra Narayan Prasad @ D.N. Prasad, resident of Panchvati, Plot No. 30, Kadamkuan Khas Mahal Park Road, P.S. Kadamkuan, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar, through the Commissioner, Department of Revenue and Land Reforms, Bihar, Patna.
2. The Commissioner, Patna Division, Patna
3. The Additional Secretary, Department of Revenue and Land Reforms, Bihar, Patna.
4. The Collector, Patna, District- Patna.
5. The Additional Collector, In-Charge Khas Mahal, Patna, District- Patna.
6. The Deputy Collector Land Reforms, Patna, District- Patna.
7. The Circle Officer, Patna, District- Patna.
8. The District Kanungo, Patna.
9. The Officer-In Charge, Kadamkuan.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Satyavrat Verma, Advocate
For the Respondent/s	:	Mr. Md. Khurshid Alam, AAG 12
	:	Mr. Fakhruddin Ali Ahmad, AC to AAG-12

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT



Date : 24-02-2020

Heard learned counsel for the petitioners and learned
AAG 12 for the State.

2. The petitioners have moved this Court for the
following reliefs:-

“(i) That this is an application praying for issuance of a Writ in the nature of a writ of Certiorari, or any other appropriate Writ order, direction for quashing the order dated 19.03.2019 (Annexure-13), in Eviction Case No. 34 of 2017, passed by the Commissioner, Patna Division, Patna. By the ex-parte impugned order dated 19.03.2019, the petitioners have been evicted from their Khas Mahal Residential premises pertaining to Khas Mahal Block-E, Plot No. 30, Kadamkua, Patna, in terms of Khas Mahal Policy, 2011. The petitioners further prays from a consequential Writ of Mandamus commanding the Respondents particularly the Respondent No. 4, to forthwith restore the possession of the petitioners in their house on Khas Mahal, Plot No. 30, Block-E, Kadamkuan, Patna after de-sealing the premises and suitably compensating the petitioners monetarily to the tune of Rs. 50 lakhs, by the authorities for illegally evicting the Petitioners in breach of the law settled by this Hon’ble Court and affirmed by the Hon’ble Supreme Court and thus causing immense mental trauma and humiliation. The petitioners further prays that the authorities be commanded to act strictly in accordance with law.”

*(ii) That the present Writ
Petition is founded on the ground that the*



action of the Respondent Authorities in forcefully evicting the Petitioners from their Khas Mahal House by issuing an ex-parte eviction order in terms of the proceedings initiated under the Bihar Khas Mahal Policy 2011, despite the fact that the least agreement of the Petitioners is of the year 1927 and the Bihar Khas Mahal Policy 2011, was enforced from 08.04.2011, which does not have a retrospective effect, as has been settled by this Hon'ble Court as well as by the Hon'ble Apex Court, thus no eviction order in case of the Petitioners could have issued in accordance with procedure laid down under Bihar Khas Mahal Policy 2011, rendering the impugned order dated 19.03.2019 as well as the action of the Respondent Authorities, illegal and arbitrary."

3. The brief facts of the case relevant for the purpose of considering the present writ application is that on 23.12.1927, lease under the Khas Mahal Policy was executed between the Collector, Patna on behalf of Secretary of State for India in Council and Smt. Janki Devi. On 19.12.1929, Smt. Janki Devi executed a sale deed in favour of Alakh Narayan Prasad who is grandfather of petitioners no. 2 to 5. On 28.07.1954, in partition between Alakh Narayan Prasad and his sons the Khas Mahal property in question was allotted to the share of the father of the petitioners no. 2 to 5. On 21.03.1973, some receipt was issued in favour of Alakh Narayan Prasad. It appears that on 21.04.1992, the father of the petitioners no. 2 to 5 sought



permission from the Additional Collector, In-charge, Khas Mahal, Patna (respondent no. 5), to use the property for commercial purpose. However, there is nothing on record to indicate as to what happened on such application, if at all filed. On 29.01.1996, respondent no. 5 issued notice to the father of petitioners no. 2 to 5 to which he submitted his reply on 19.02.1996 praying for a short adjournment and also requesting to get the premises re-inspected. On 08.11.1998, the father of the petitioners no. 2 to 5 died. Later on 04.05.2006, notice was issued by the Collector, Patna (respondent no. 4) in the name of the father of the petitioners no. 2 to 5, who had already passed away, alleging violation of the terms and conditions of the lease and use of the property for commercial purpose and, thereafter, final order was passed on 03.05.2006 indicating that the lease was already cancelled on 16.08.1999 and also that the Government had given approval for resumption of the premises by order dated 19.03.2006. However, the petitioners against the notice dated 04.05.2006 filed CWJC No. 7765 of 2008, which was disposed off by order dated 04.09.2012, observing that such notice may require reconsideration by the respondent State in light of the new policy formulated for Khas Mahal.



4. The Court would notice here that the learned counsel for the petitioners himself had contended in CWJC No. 7765 of 2008 that the petitioners were willing to go by New Khas Mahal Policy introduced by the State Government. To challenge such order of the writ Court, the authorities filed LPA No. 1391 of 2011, in which, the Division Bench had clarified that the State can take action against the writ applicants in accordance with the Khas Mahal Manual through an authority, which is competent in terms of such policy. Accordingly, LPA No. 1391 of 2011 was disposed off with such modification/clarification. Thereafter, by order dated 20.11.2018/19.03.2019 in Eviction No. 34 of 2017, the Divisional Commissioner, Patna allowed the same directing for eviction of the petitioners from the premises and by order dated 08.12.2019 the Collector authorized the Circle Officer, Patna to get the premises vacated. In terms thereof, the petitioners were forcibly evicted on 11.12.2019, but by interim order passed in the present proceeding on 16.01.2020, their possession has been restored. The petitioners have challenged such action of the authorities.

5. After some arguments, learned counsel for the petitioners, on the observation of the Court that since already



there was stand taken by learned counsel for the petitioners before the Court in CWJC No. 7765 of 2008 that they were willing to go by the New Khas Mahal Policy, the petitioners would be agreeable to the Collector considering afresh the issue with regard to cancellation of the lease itself, under the new Bihar Khas Mahal Manual, 2011, learned counsel agreed to the same.

6. In view thereof, the writ petition stands disposed off by setting aside the order 16.08.1999 along with all consequential orders passed by the authorities cancelling the lease deed in favour of the Khas Mahal property in question. However, the Collector, Patna is permitted to start the proceeding from the stage of issuance of show cause to the petitioners on grounds as available to him in law, including those taken initially in the notice issued to the father of the petitioners no. 2 to 5 dated 29.01.1996. The same will be done in the name of the petitioners within four weeks from today. Upon notice being served to them, the petitioners would file their reply, latest within three weeks of receipt of such notice by them. After that, the Collector, Patna shall fix the date, which shall be communicated to the petitioners, for hearing. After hearing the parties, if they choose to appear, and taking into



consideration the reply filed by the petitioners, if any, the Collector shall pass a reasoned order, within two months from the date of concluding of the arguments by the parties. The order to be passed by the Collector, Patna in the present case, in terms of this order, shall give fresh cause of action to both the sides to take consequential steps, in accordance with law, before the appropriate forum.

7. Before parting, the Court would only observe that it has not expressed any opinion with regard to the merits of the matter, both on facts as well as in law.

(Ahsanuddin Amanullah, J)

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