

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8508 of 2020

Arvind Kumar Singh, Male, aged about 58 years, S/o Late Dr. Ramanuj Prasad Singh, r/o Plot No. 10 X, Road No. 7, Rajendra Nager, P.S. Kadam Kuan, District - Patna.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
2. The Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
3. The Commissioner, Patna Municipal Corporation, Maurya Lok Complex, Patna.
4. The Estate Officer, Patna Municipal Corporation, Maurya Lok Complex, Patna.

... .. Respondents

Appearance :

For the Petitioner : Mr. Patanjali Rishi with Mr. Prerna Rishi,
Advocates

For the P.M.C. : Mr. Bindhyachal Singh, Sr. Advocate with
Mr. Vipin Kumar Singh.

For the respondent Nos

1 & 2 : Mr. Satyeshwar Prasad AC to SC-7.

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE MADHURESH PRASAD)

Date : 10-12-2021

The petitioner prays for quashing of letter No. 11163 dated 24.09.2020 whereby the respondents have sought to



impose a mutation fee to the tune of 34,85,183/- (Rupees Thirty four lakhs eighty five thousand one hundred and eighty three only).

2. The brief factual matrix is that plot No. 10-X of Rajendra Nagar in Block No. B, having an area of 840 Sq. yards in the city of Patna was leased to one Shri Ramesh Singh S/o Sri Lakshmi Narain Singh vide registered lease deed dated 15.03.1966 for a period of 99 years, renewable at the option of the lessee. The lessee, thus, came in possession of the said property. The original lessee sold the same to the father of the present petitioner vide registered deed of sale dated 07.04.1999. The petitioner claims to have been put in possession pursuant to the same. For the purpose of stamp duty, the property valuation of the land in-question was Rupees 15,95,000/- (Rupees Fifteen lakhs ninety five thousand only) and it is the case of the petitioner that to meet the said requirement, the said amount was recorded on the deed of lease so as to pay the requisite stamp duty as per Government assessment. The petitioner's father, thus, came in possession of the property in-question. Mutation in his name was approved vide order dated 10.10.2002, bearing memo no. 3095. The petitioner's father passed away on 01.09.2007. The property in-question was partitioned among his brothers and sisters; and the petitioner, thus, acquired his share of the property. Having acquired his share, he applied for mutation on 10.03.2018. On 24.09.2020, the impugned demand of mutation fee has been made, which is Annexure- P/6 to the writ petition.

3. The specific case of the petitioner is that such demand of mutation fee is contrary to the terms of the lease. Paragraph



No. 12 of which is relevant and is being reproduced:-

“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.”

4. The respondents, on the other hand, have relied upon the Patna Regional Development Authority (Disposal of Land Rules (hereinafter referred to as ‘the 1978 Rules’), more specifically Rule 20 thereof which has been referred to in paragraph No.7 of the counter affidavit and which reads as follows:-

“Rule 20 of the Land Disposal Rules- 1978 set up under Bihar Regional Development Authority Act, 1981 provides as follows:

20. Transfer of land leased by the Authority- *“ No plot or part there be 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 been 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 rate of 6 percent 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 percent excess of sale price over the premium paid by him. This however, shall not be less than 10 percent of the premium charge 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.”

5. The same issue fell for consideration in the case of ***Sanjay Singh versus State of Bihar & Others reported in 2015(2) PLJR 58***, wherein, similar demand was raised by the respondent authorities placing reliance on the 1978 Rules, as has been done in the instant case. Relevant extract of the judgment in the case of ***Sanjay Singh (supra)*** reads as follows:-

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.....

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.”

6. It is apparent from the judgment that the Court has held that the PRDA would be bound by the terms of lease it has executed itself. The terms and conditions contained therein, therefore, have been held to be binding inter parties. The Court has clearly held that no demand can be made based on the 1978 Rules. This Court would only add that the terms and conditions of lease executed between two parties cannot be permitted to be altered unilaterally, by one party, by resort to the 1978 Rules.

7. The learned Senior counsel representing the PRDA, after realizing his difficulty, based on decision in the case of the **Sanjay Singh (supra)**, fairly submits that in view of the settled legal position, the instant case may be considered as a covered matter.

8. Having considered the rival submissions and the legal position, this Court would quash the demand raised by letter



dated 24.09.2020, bearing memo No. 11163 issued by the Estate Officer of the Patna Municipal Corporation. The writ petition stands allowed in the aforesaid terms.

(Madhuresh Prasad, J)

I agree.
Chakradhari Sharan Singh, J:

(Chakradhari Sharan Singh, J)

shyambihari/

AFR/NAFR	
CAV DATE	
Uploading Date	20.12.2021
Transmission Date	

