

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.8616 of 2001**

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- 1 (a) Rajeev Ranjan Prasad  
(b) Sanjay Kumar  
(c) Manoj Kumar  
(d) Rakhi Sinha  
(e) Rasi Sinha

All are son and daughter of Late Jagat Nandan Prasad, resident of Block No. G, Kadamkuan, P.S. Kadamkuan Town and District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar.  
2. The Deputy Secretary, Revenue & Land Reforms Department,  
Government of Bihar, Patna.  
3. Collector, Patna  
4. Additional Collector, Patna  
5. Anchal Adhikari, Patna Sadar, Patna

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Kumar Uday Singh, Advocate  
For the Respondent/s : Mr. GP-2

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**CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA**  
**CAV JUDGMENT**

**Date : 10-05-2022**

Heard learned counsel for the petitioners and learned  
counsel for the respondents.

The writ petition under Article 226 of the Constitution of India has been filed for quashing the letter bearing memo no. 1161 dated 25.06.2001 (Annexure-4) issued by the Collector, Patna (respondent no. 3) whereby and whereunder the lease deed of the petitioners have been cancelled and has resumed the land in question including residential house and structures standing



thereupon belonging to the petitioners; further directed to the petitioners to handover possession of the same to the Anchal Adhikari, Patna, Sadar (respondent no. 5) within one week of receipt of the letter.

Briefly stated the facts of the case as stated in the writ petition that 0.109 acre equivalent to 3 *kathas* 9.5 *dhurs* piece of land was leased out permanently from generation to generation from 21.09.1935 to late Sri Gokhulanand Prasad, grand father of the petitioners by the Collector, Patna on behalf of the Secretary of the State of India in council by a registered lease deed dated 23.02.1936. The grand father of the petitioners after the grant of permanent lease from generation to generation constructed a dwelling house on the land in question.

In the year 1996, the father of the petitioners received a show cause notice bearing Memo No. 1173 dated 18.06.1996 from the Additional Collector, Patna asking him why the lease of the land in question should not be cancelled for violated the terms and conditions of the lease agreement. The father of the petitioners gave his reply to the show cause notice stating therein that he had not violated any terms and conditions of the lease agreement.

The Collector having not found reply to the show cause satisfactory and recommended cancellation of the lease agreement.

Learned counsel appearing on behalf of the petitioner submits that the action of the respondent authority is wholly



unsustainable in law on the ground that there is no specific provision for direct resumption under the lease agreement and resumption according to Rule 21 of the Khas Mahal Manual can be made only for public purposes and according to Rule 22 of the Khas Mahal Manual, the Collector can take steps or direct possession of the property in question only under the order of a competent civil court.

A counter affidavit has been filed on behalf of the respondents stating therein that as per Clause 6 of the Agreement the lessee will not use the said plot for any commercial gains except with the consent of the lessor. Clause 7 of the Agreement reveals if any breach or non-observance of any clause shall allow the lessor to annul the lease and take over the land in question after serving notice to the lessee.

In the year 1995-96 in course of physical inspection of the land in question, it was found that the lessee has violating the terms and conditions of the agreement. Accordingly the petitioners were given notice vide letter dated 18.06.1996. The lessee gave their reply to the show cause notice stating therein that they had not violated any terms and conditions of the lease agreement.

The respondents recommended for the annulment of lease in question vide letter no. 93 dated 01.04.1997 to Divisional Commissioner. The Divisional Commissioner, Patna vide letter no. 516 dated 04.08.1997 has approved the recommendation and lastly



the department accepted the recommendation with a direction to resume the land in question.

Learned counsel appearing on behalf of the petitioners submits that lease in question being perpetual lease cannot be subject to any interference by the State. The lease in question has created a vested legal right in the lease holders to the exclusion of others and the contractual obligation casted on the parties to the lessee would bind the parties untill the lease is determined by the competent forum (Civil Court).

Learned counsel for the petitioners in support of his submissions relied upon the following judgments :

**(i) Shri Sanjay Singh Vs. Patna Municipal Corporation reported in 2021 (1) BLJ 5.**

**(ii) Uday Sinha and others Vs. The State of Bihar and others, reported in 2021 (5) BLJ 517.**

**(iii) Khas Mahal Citizen Welfare Society Vs. The State of Bihar and others, reported in 2016 (1) PLJR 277.**

Learned counsel for the petitioners have also submitted that the aforesaid judgments rendered by a Coordinate Bench of this Court has also been upheld by a Division Bench in the case of **The State of Bihar and others Vs. Khas Mahal Citizen Welfare Society reported in 2017(3) PLJR 662.** Learned counsel for the petitioners further submits that the aforesaid judgment rendered



by the Division Bench of this Court in the case of Khas Mahal Citizen Welfare Society (supra) has also been upheld by a judgment rendered by the Hon'ble Supreme Court of India in the case of **The State of Bihar and others Vs. Khas Mahal Citizen Welfare Society reported in 2019 (1) PLJR 628 (SC)**.

Learned counsel for the petitioners submits merely by an administrative/executive order, lease deed in question can neither be cancelled nor possession of the land in question can be resumed unilaterally and the respondents are required to take recourse to the due process of law under the rule 21 and 22 of the Khas Mahal Mannual by invoking the jurisdiction of the competent civil court by filing appropriate suit and not otherwise. Learned counsel for the petitioners further submits that the Collector, Patna has cancelled the lease deeds in question and directed for resumption of the possession of the land in question, which is contrary to the law laid down by the Hon'ble Supreme Court of India in the case of **Express Newspapers Private Limited and others Vs. Union of India and others, reported in AIR 1986 SC 872** as also contrary to the law laid down by this Court in a judgment in the case of **The Gait Public Library and Institute Vs. The State of Bihar and others, reported in 1995 (1) PLJR 585**.

Learned counsel for the State is also not in a position to contest the stand in view of the judicial pronouncement noted above and fairly submits that the present writ petition is squarely



covered by the judgments rendered by this Court in the case of **(i) Shri Sanjay Singh Vs. Patna Municipal Corporation reported in 2021 (1) BLJ 5, (ii) Uday Sinha and others Vs. The State of Bihar and others, reported in 2021 (5) BLJ 517,(iii) Khas Mahal Citizen Welfare Society Vs. The State of Bihar and others, reported in 2016 (1) PLJR 277** and the same has also upheld by the Hon’ble Supreme Court of India in the case of **The State of Bihar and others Vs. Khas Mahal Citizen Welfare Society reported in 2017(3) PLJR 662.**

For the reasons aforementioned, the letter bearing memo no. 1161 dated 25.06.2001 (Annexure-4) issued by the Collector, Patna cannot be upheld and is accordingly quashed.

The writ petition is allowed.

**(Rajesh Kumar Verma, J)**

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