

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8441 of 2022

1. Ashwini Kumar S/o Late Brijnandan Prasad Railway Hunter Road, Near JONEX Gym, East Lohanipur, P.S.- Kadamkuan, Patna- 800003.
2. Deepak Kumar S/o- Late Mohan Prasad, Salimpur, Ahra Gali, Ward No. 03, Patna- 800004.
3. Surendra Kumar S/o- Late Baijnath Prasad, Maa Vindyawashini Bhawan, Dariyapur Professor Lane, Patna- 800003.
4. Ajay Kumar S/o- Lakhan Prasad Gupta, East Lohani Pul, Kashinath Gali, P.S.- Kadamkuan, Patna- 800003.
5. Umesh Prasad Gupta S/o- Late Vishwanath Shaw, Chiraiyataad, High School Gali, P.S.- Kankarbagh, Patna- 800001.
6. Satyendra Kr. Gupta S/o- Late Shivnarayan Shaw, Dariyapur Gola, Dhobi Gali, Patna- 800003.
7. Suraj Prasad S/o- Late Baidhnath Prasad, Banrara Gate, Daldali Road, Patna- 800003.
8. Mahendra Prasad Gupta S/o- Late Shivnarayan Shaw, Dariyapur Gola, Dhobi Gali, Patna- 800003.
9. Rameshwar Prasad Gupta S/o- Late Shivnarayan Shaw, Lohanipur Bada Phaatak, Sai Colony, P.S.- Kadamkuan, Patna- 800003.
10. Rajendra Prasad Gupta S/o- Late Shiv Shaw, New Chitragupta Nagar, P.S.- Patrakar Nagar, Patna- 800020.
11. Mohan Prasad S/o- Late Tulsi Shaw, Kankarbagh, Patna- 800020.
12. Vinod Kr. Singh S/o- Late Ram Babu Singh, Dariyapur Gola, Patna- 800003.
13. Nirmal Kr. Gupta S/o- Late Baijnath Shaw, Bakarganj, Patna- 800003.
14. Rajesh Kumar S/o- Late Rajanram, Gandhi Nagar, P.S.- Agam Kuan, Patna- 800026.
15. Md. Abdul S/o- Md. Sakuj, Bhinki Pokhar Tal, Bhanpura, Patna.
16. Dayanand Kumar S/o- Bihari Prasad Gupta, Bhogipur- Chakpul, P.S.- Gopalpur, Patna- 800053.
17. Raju Kumar S/o- Late Birendra Chaudhary, Bakarganj, Daldali Road, Patna- 800003.
18. Md. Ashraf, S/o- Late Md. Sabban, Bakarganj, Muharrampur, Patna- 800003.
19. Vipin Kumar S/o- Baijnath Gupta, Dariyapur Gola, Patna.
20. Md. Haider Ali S/o- Md. Murtuja Hussain, Bakarganj, Naalapar, Udhog Bhawan, Patna- 800003.
21. Jitendra Kr. Pappu S/o- Late Rambabu Singh, Dariyaganj, Patna.
22. Faiyaz Ahmad S/o- Md. Alauddin, Adilabad Colony, Patna.
23. Md. Shahid S/o- Late Md. Mubarak, Bakarganj, Udhog Bhawan, Patna.
24. Kaushlendra Kumar S/o- Rajendra Pd. Singh, Chand Road, Gali No. 10, Patna.
25. Arvind Kumar S/o- Late Janak Thakur, Railway Hunter Road, East Lohanipur, Patna.



... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, State of Bihar, Patna.
2. The Principal Secretary, Department of Urban Development and Housing, Government of Bihar, Patna.
3. The Bihar Industrial Area Development Authority through its Managing Director, Patna.
4. The Managing Director, Bihar Industrial Area Development Authority, Patna.
5. The District Magistrate cum Collector, Patna.
6. Patna Municipal Corporation through the Municipal Commissioner, Patna.
7. The Law Officer, Bihar Industrial Area Development Authority, Patna.
8. The Executive Director, Bihar Industrial Area Development Authority, Patna.

... .. Respondent/s

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Appearance:

For the Petitioner/s	:	Mr. Amit Srivastav, Sr. Advocate Mr. Apurv Harsh, Advocate Mr. Manu Tripurari, Advocate Mr. Prashant Bhardawaj, Advocate Mr. Rajeev Ranjan, Advocate
For the BIADA	:	Mr. Kumar Priya Ranjan, Advocate Mr. Girish Nandan Abhishek, Advocate Mr. Ankur Apurv, Advocate
For the State	:	Mr. Kinkar Kumar (SC- 9) Ms. Deepika Sharma, AC to SC-9 Mr. Aayush Abhishek, Advocate Mr. Yogesh Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

CAV JUDGMENT

Date: 23.12.2022

The present writ petition has been filed for quashing the letter dated 31.05.2022 issued by the Executive Director, Bihar Industrial Area Development Authority, Patna (hereinafter referred to as the 'BIADA') i.e. the respondent no. 8 herein, whereby and whereunder the petitioners have



been given final notice to vacate the premises situated on the ground floor of the Udyog Bhawan, within three days, where the petitioners are stated to be running their book stalls illegally, failing which it has been directed that the said place shall be cleared with the help of administration. The petitioners have also prayed for quashing the notice dated 22.05.2022, issued by the district administration, directing the petitioners to remove the encroachment and vacate the premises of Udyog Bhawan.

2. At the outset, it may be pointed out that the present writ petition qua the petitioner no. 1 has stood disposed off as not pressed inasmuch as he has filed a title suit bearing Title Suit No. 69 of 2021, which is pending before the Ld. Court of Munsif-1, Patna, however, with liberty to him to pursue the said suit.

3. The brief facts of the case, according to the petitioners, are that they are lawful tenants of BIADA and are poor people who are engaged in selling books through their book stalls situated in the campus of BIADA, located at Udyog Bhawan since the past several decades. It is also submitted that the petitioners were the successful applicants



who were allotted 28 shops based on tender auction process, which took place in the year 2007-08, whereby it was agreed that the petitioners will be given shops located at Plot No. 1138 and 1139 at a monthly rent of Rs. 4501/-, along with the facility of electricity/generator. The petitioners are stated to be paying rent since 2008 till date to BIADA. It is contended that the petitioners have been regularly depositing the rent amount with the respondents till the year 2020, when the COVID pandemic broke out and due to lockdown they were unable to operate from the said premises for quite some time, resultantly they had suffered substantial financial loss. It is the further case of the petitioners that the respondent no. 7 had sent legal notices to the petitioners in the year 2017, wherein the tenant/landlord relationship between the petitioners and the BIADA was admitted, however, eviction notice was issued to the petitioners on the ground that they had failed to pay the rent due thus causing wrongful loss to BIADA, had violated the terms and conditions of BIADA, had encroached the pathway of the area near the ground floor of Udyog Bhawan resulting in encroaching the unrented area of BIADA and had also illegally sublet the rented premises to unauthorized occupants.



4. The learned senior counsel for the petitioners has submitted that prior to issuance of the aforesaid notices dated 31.05.2022, directing the petitioners to remove the encroachment in question, neither any notice has been given nor any encroachment proceedings have been initiated, much less any recourse has been taken to the due process of law for the purposes of evicting the petitioners. It is also contended that no summary proceedings can be initiated in case of bonafide dispute of possession of the land/shops in question and moreover, the petitioners cannot be treated as encroachers and evicted in summary encroachment proceedings and no unilateral decision of eviction can be taken by the authorities in such a case, unless the title is decided by the competent civil court. It is also submitted that the aforesaid impugned notices do not contain any material to show that the petitioners are encroachers, for the purposes of invoking the jurisdiction vested under Section 3 of the Bihar Public Land Encroachment Act, 1956 (herein after referred to as the “Act, 1956”). In fact a bare perusal of Section-3 of the Act, 1956 would show that reasonable grounds and materials should be available, for the Collector to presume that the noticee has



encroached the public land, however, as far as the present case is concerned, the impugned notice is vague and does not disclose any such ground or material and is contradictory to the respondent's own admitted stand that the petitioners are tenants, who have defaulted in paying rent.

5. The learned senior counsel for the petitioners has referred to a judgment rendered by the Hon'ble Apex Court in the case of *Olga Tellis & others vs. Bombay Municipal Corporation & Ors.*, reported in *AIR 1986 SC 180*, to submit that if the right to livelihood is not treated as a part of the constitutional right to live, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. The learned senior counsel for the petitioners has further submitted that the said Judgment rendered in the case of *Olga Tellis & others* (Supra) has also held that Article 21 includes livelihood and so if deprivation of livelihood is not effected by a reasonable procedure established by law, the same would be violative of Article 21. The learned senior counsel for the petitioners has next referred to a judgment rendered by this Court in the case of *Smt. Manju Devi & Ors. vs. The State of*



Bihar & Ors., reported in ***1999 (2) PLJR 641***, to submit that the appropriate remedy for the BIADA is to approach the competent Court of civil jurisdiction for ejectment of the petitioner and for seeking a decree for realization of the arrears of rent from them. In this regard, it would be apt to refer to paragraphs no. 30 to 32 of the aforesaid judgment rendered in the case of ***Smt. Manju Devi & Ors.*** (supra) herein below:-

“30. Moreover, the submission made by Mr. Jha on equitable considerations completely overlooks the point that the principle of rule of law, the very basis of our constitutional system cannot be sacrificed on any equitable consideration. Here I would venture to say that this court has the least sympathy for the petitioners in this case concerning whom the Additional District Judge has found that they were defaulters in payment of monthly rent and were in occupation of the disputed shop after the expiry of the lease and in violation of several terms and conditions of the tenancy. But this Court is unable to condone or overlook the fact that respondents 6 and 7 in trying to get rid of the petitioners defied the system of administration of justice under the laws of the land. In doing so they were from the very beginning destined to loose before a court of law because supporting the petitioners’ action would mean negating the rule of law and action contrary to the



very purpose and object of the courts.

31. It must be emphasised here that it is not a case where respondents 6 and 7 were remediless. It was perfectly open to them to seek the petitioners' ejectment and a decree for the realisation of the arrears of rent from them by approaching a competent court of civil jurisdiction. They, however, preferred an illegal means presumably because the remedy before a court of law would take time. In fact Mr. Jha in course of submissions protested that in the facts and circumstances of the case it would be quite unfair to ask the landlords to go to a Civil Court and to spend 25 years in litigation there. I am only reminded of a proverb in the elementary book of Persian:

RAHE RAAST BERAU GAR-OHE DOOR AST
(Take the straight path no matter that it is long)

32. For the reasons discussed above, I have no hesitation in holding that the petitioners were unlawfully ejected from the disputed premises on May 2, 1997. The logical corollary of this finding would be that their possession of the disputed shop must be restored."

6. The learned senior counsel for the petitioners has also referred to a judgment rendered by this Court in the case of **Sanjay Singh vs. Patna Municipal Corporation & Ors.**, reported in **2021(1) PLJR 209**, to submit that resumption of



possession of a land/tenanted premises can be taken only by taking recourse to the due process of law. It would be relevant to reproduce paragraphs no. 73 to 80 of the aforesaid judgment rendered in the case of **Sanjay Singh** (supra) herein below:-

“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 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 Dharmander 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.”

7. Per contra, the learned counsel for the respondent BIADA has submitted that admittedly the respondents have given legal notices to the petitioners both in the year 2017 as well as in the year 2018 to the effect that they have not only defaulted in payment of rent but have also encroached the



pathway illegally and have also sublet their premises to unauthorized and illegal occupants, hence they should vacate the premises in question forthwith and clear the dues on the head of outstanding rent. It is thus submitted that it is not a fact that no notice was given to the petitioners prior to the issuance of the notice dated 31.05.2022. The learned counsel for the respondent-BIADA has also referred to an order dated 24.05.2022 issued by the Additional District Magistrate, Law & Order, Patna, whereby and whereunder upon a request made by the Chief Administrative Officer, BIADA, Udyog Bhawan, Patna, vide letter dated 21.05.2022, for deputing a Magistrate and armed police force for removing the encroachment made on the ground floor premises of Udyog Bhawan, from the clutches of the unauthorized occupants, the Additional District Magistrate, Law & Order, Patna had deputed a Magistrate, police officers and police force for the purposes of maintaining law and order at the premises in question so that encroachment in question can be removed by BIADA. It is also submitted that since the petitioners have defaulted in payment of rent, they have no right to occupy the premises in question and are liable to be evicted.



8. The learned counsel for the respondent-BIADA has also referred to a judgment rendered by the Hon'ble Apex Court in the case of *Ashoka Marketing Limited & Another vs. Punjab National Bank & Others*; reported in *A.I.R. 1991 SC 855*, paragraph no. 67 whereof is reproduced herein below:-

“67. It has also been urged that in Section 22 of the Rent Control Act, special provision has been made for recovery of possession of premises belonging to a company or other body corporate or any local authority or any public institution and that premises belonging to companies, corporations and autonomous bodies mentioned in clauses (2) and (3) of Section 2(e) of the Public Premises Act would be covered by the said provision and that in view of this special provision it is not necessary to have a further provision in the Public Premises Act for the recovery of possession belonging to those bodies, and therefore, the provisions of the Public Premises Act should be confined in their application to premises other than premises covered by the Rent Control Act. Section 22 of the Rent Control Act provides as under:

“22. Where the landlord in respect of any premises is any company or other body corporate or any local authority or any public institution and the premises are required for the use of employees of such landlord or in the case



of a public institution for the furtherance of its activities, then, notwithstanding anything contained in Section 14 or any other law, the Controller may, on an application made to him in this behalf by such landlord, place the landlord in vacant possession of such premises by evicting the tenant and every other person who may be in occupation thereof, if the Controller is satisfied—

(a) that the tenant to whom such premises were let for use as a residence at a time when he was in the service or employment of the landlord, has ceased to be in such service or employment; or

(b) that the tenant has acted in contravention of the terms, express or implied, under which he was authorised to occupy such premises; or

(c) that any other person is in unauthorised occupation of such premises; or

(d) that the premises are required bona fide by the public institution for the furtherance of its activities.

Explanation.— For the purpose of this section, “public institution” includes any educational institutional, library, hospital and charitable dispensary but does not include any such institution set up by any private trust.”

9. Having heard the learned counsel for the parties and having perused the materials on record, this Court finds



that as far as the order dated 24.05.2022, passed by the Additional District Magistrate, Law & Order, Patna, by which a Magistrate, police officer and police force has been deputed, for evicting the encroachers from the ground floor of Udyog Bhawan, Patna, is concerned, the same is illegal inasmuch as admittedly neither any encroachment proceedings have ever been initiated against the petitioners nor any final orders have been passed by the competent authority of the State Government, arriving at a finding that the petitioners are encroachers, hence the Additional District Magistrate, Law & Order, Patna had no authority under the law to depute police force at the mere request of the Chief Administrative Officer, BIADA, Patna for removal of alleged encroachment, hence the said order dated 24.05.2022 is held to be illegal, consequently the same stands annulled.

10. This Court further finds that mere issuance of legal notices by the respondent-BIADA, as aforesaid, would not suffice for forcefully evicting the petitioners from the premises in question inasmuch as the respondent-BIADA also admits existence of tenant-landlord relationship in between the petitioners and the respondent-BIADA, hence resumption of possession of the premises in question 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 law, by assuming powers that the law does not vest in BIADA, in a relationship of lessor or lessee/tenant or landlord. This aspect of the matter is squarely covered by the judgment rendered by this Court in the case of ***Smt. Manju Devi & Others*** (supra) as also the one rendered in the case of ***Sanjay Singh*** (supra). Consequently, the impugned notices dated 31.05.2022, issued by the respondent no. 8 stands vitiated in the eyes of law. As far as the judgment referred to by the learned counsel for BIADA, rendered by the Hon'ble Apex Court in the case of ***Ashoka Marketing Limited & Another*** (supra), is concerned, the same is only relevant for the purposes of carving out a distinction between the Rent Control Act and the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, which is not in dispute. In fact, the learned counsel for the BIADA has himself referred to the Bihar Government Premises (Rent, Recovery & Eviction) Act, 1956, which has been enacted for evicting certain persons/unauthorized occupants from government premises, however, the same also provides that such eviction can only be made by the competent authority,



which in the present case has been notified to be the concerned Sub-Divisional Officer of the area in question in which the premises is situated and that too after initiating appropriate proceedings, issuing notices to be served by registered post or in such other manner as may be prescribed and passing appropriate eviction orders.

11. Having regard to the facts and circumstances of the case and for the reasons mentioned herein above, this Court finds that the notices dated 31.05.2022, issued by the respondent no. 8 to the petitioners are illegal and contrary to law, hence are quashed, however, liberty is reserved to the respondents to take recourse to the due process of law.

12. The writ petition stands allowed.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	AFR
CAV DATE	15.11.2022
Uploading Date	29.3.2023
Transmission Date	NA

