

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15318 of 2021

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Smt. Minnat Ara @ Minnat Ara Wife of Late Md. Jamil Alam @ S. Jamil Alam Resident of Mohalla- Nurshing Tamoli Lane, Bari Road, Bakarganj, P.S.- Gandhi Maidan, District- Patna.

... .. Petitioner

Versus

1. The State of Bihar through the Secretary, Agriculture Department, Government of Bihar, Patna.
2. The Administrator-Cum- Appellate Authority (as claimed) Bihar State Agricultural Marketing Board (Dissolved) Patna.
3. The Under Secretary Bihar State Agricultural Marketing Board (Dissolved), Pant Bhawan, Bailey Road, Patna.
4. The Sub- Divisional Officer Patna City-Cum- Special Officer, Agricultural Produce Market Committee Musallah-Pur (Dissolved) Patna- 6.
5. Md. Khalil @ Sukhu Son of Late S. Mazoor Alam, Resident of Mohalla- Chaman Manzil, Darzi Tola, Sabzibagh, P.S.- Pirbahore, District- Patna.

... .. Respondents

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Appearance :

For the Petitioner	:	Mr. Y.V.Giri, Senior Advocate
		Mr. Md. Irshad, Advocate
For the Respondent State: (Marketing Board)		Mr. Awanish Nandan Sinha, GP-
For Respondent No.5 :		Mr. Suresh Prasad Singh No.1, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 02-02-2022

This matter has been taken up for hearing online because of COVID-19 pandemic restrictions.

2. Heard Mr. Y.V. Giri, learned Senior Counsel appearing on behalf of the parties, Mr. Awanish Nandan Sinha, learned G.P. and Mr. Suresh Prasad Singh No.1, learned counsel for the respondent no.5.



3. The petitioner is aggrieved by an order dated 31.07.2021 passed in Misc./Appeal/Revision Petition No. 02/2019 by the Administrator-Cum-Appellate Authority, Bihar State Agricultural Marketing Board (since dissolved), Patna, whereby an order dated 01.10.2018 passed in Case No. 01/2018 by the Sub-Divisional Officer, Patna City-cum-Special Officer, Agriculture Produce Market Committee (dissolved), Musallahpur, Patna, has been set aside and the license to use Shop No. 59 and 115, located in Agricultural Produce Market Area, Musallahpur, Patna has been held to be non-existent.

4. The petitioner claims to be the daughter-in-law of late S. Manzoor Alam and widow of late S. Jamil Alam, son of the said S. Manzoor Alam. There does not appear to be any dispute over the fact that late S. Manzoor Alam was allotted shop No. 59 in the market area by the Chairman, of the Agriculture Produce Market Committee, Musallahpur, Patna, a copy of which has been brought on record by way of Annexure-2 to the writ application. S. Manzoor Alam died on 28.12.1989, leaving behind, according to the petitioner, two widows, viz. Bibi Sago Khatoon and Bibi Sultana Khatoon. The petitioner, it is stated, is the widow of one of the sons of late S. Manzoor Alam out of his wedlock with Bibi



Sago Khatoon. Respondent No. 5 is also son of late S. Manzoor Alam and Bibi Sago Khatoon.

5. Before delving into the other aspects of the controversy, it will be appropriate to note the two conditions incorporated in the agreement, which are as under : -

“Fifthly : That the licensee shall not by reason of being allowed to use such building, acquire or be entitled to any right or interest whatsoever, save and except the right, enjoy or use the said building subject to the conditions of this agreement.

xxx xxx xxx

Ninthly : That if the license is not renewed, the licensee shall vacate the premises within 30 days of the expiry of the license at his own expense and if the licensee fails to vacate the building within thirty days from the expiry of the license committee shall be entitled to realize a penal charge @ Rs.25.00 per day.”

6. It is evident from the said condition in the agreement that a licensee could not, by reason of being allowed to use such shop, acquire or be entitled to any right or interest whatsoever, save and except, enjoy or use the said building subject to the conditions of this agreement. The ninth condition postulated that if the license was not renewed, the licensee would be required to



vacate the premises within 30 days of the expiry of the license at his own expense and if the licensee fails to vacate the building within thirty days from the expiry, the license committee shall be entitled to realize a penal charge @ Rs.25.00 per day.

7. The fact that said S. Manzoor Alam died in 1989, it appears, was not made known to the marketing committee. It is also an undisputed fact that allotment of shop was cancelled on 11.06.1999 by the Marketing Secretary, which was communicated through letter No. 3702 dated 11.06.1999, copy of which has been brought on record by way of Annexure-3 to the writ application. The reason, which was assigned in the said communication dated 11.06.1999 for cancellation of license was closure of business in the said shop and non-renewal of the license issued vide License No. 756/82-83. Further, despite repeated reminders, the arrears of rent was not paid. It is evident, on reading of the said communication dated 11.06.1999, that it was addressed to 'S. Manzoor Alam', who was no more on the date of its issuance, presumably because factum of his death was not communicated to the Marketing Committee.

8. It is the petitioner's case in short that there was none among the heirs of S. Manzoor Alam, who could clear the arrears of rent except the petitioner and, therefore, the petitioner sought



permission from the competent authority to pay the arrears. After getting permission she deposited the arrears. It is her further case that subsequently, the petitioner was allowed to run the shop with issuance of a licence in the year 1999. In support of the said stand, the petitioner has brought on record, a copy of the licence No. 756-82-83, which was issued in the name of S. Manzoor Alam in relation to allotment of the said shop No. 59. The petitioner's name in the said license has not been mentioned as a licensee. Her name, however, figures at the bottom of the license, which was issued in 1982. The petitioner has not been able to explain the circumstance in which her name was inscribed in the license, which was issued in favour of said S. Manzoor Alam in 1982-83. The fact remains undisputed, however, that the license granted in favour of S. Manzoor Alam was not surviving consequent upon his death and the said license was cancelled for breach of the terms of license.

9. It is the case of respondent No.5, on the other hand, that he was a minor when S. Manzoor Alam died in 1989. It is his case that the petitioner could not have exclusively taken over the business of said S. Manzoor Alam after his death, respondent No. 5 also being one of the legal heirs of S. Manzoor Alam.

10. The records disclose that the dispute between petitioner and respondent No.5 had travelled to the Sub-Divisional



Officer, Patna City-cum-Special Officer, Agriculture Produce Market Committee (dissolved), Musallahpur, Patna. The Special Officer had decided the said dispute by passing an order dated 01.10.2018 between the petitioner and respondent No.5, accepting the claim of the petitioner on the ground that the said shop was approved in the name of the petitioner, against which respondent No.5 could not produce any document.

11. Aggrieved by the said order of the Sub-Divisional Officer, Patna City-cum-Special Officer, Agriculture Produce Market Committee (dissolved), Musallahpur, Patna, the appeal was preferred by respondent No.5, on which the impugned order dated 31.07.2021 has been passed.

12. There is one more aspect which has emerged from the materials on record. The petitioner's husband S. Jamil Alam was also having a license in the same marketing area against shop No.115. He died on 29.03.2005. Noticing the fact that both the licensees, namely, S. Jamil Alam and S. Jamil Alam had died, in view of clear stipulation in the terms of the license that it was not transferable, he has come to a conclusion that neither of the parties, viz., the petitioner and respondent No.5 can be treated to have become a licensee. Accordingly, he has directed for



cancellation of allotment of Shop No.59 and 115 and for taking steps for fresh allotment after getting them vacated.

13. In the background of the above noted admitted facts, this writ application has been filed with a plea that once the petitioner was allowed to run the business by the competent authority, the allotment of shops could not have been cancelled by the appellate authority.

14. Mr. Y.V. Giri, learned Senior Counsel appearing on behalf of the petitioner has submitted that as the committee accepted the rent despite cancellation of license in 1999, fresh relationship of landlord and tenant came to be established with the petitioner on the one hand and the market committee on the other. He has submitted that even if the petitioner is held not to be a licensee, since she is occupying the premises and running her business, she cannot be evicted without following due process of law. He has placed reliance on Supreme Court's decisions in case of *Bishan Das v. State of Punjab*(AIR 1961 SC 1570), *Lallu Yeshwant Singh v. Rao Jagdish Singh* (AIR 1968 SC 620), *Krishna Ram Mahale v. Shobha Venkat Rao*, reported in (1989) 4 SCC 131, *Gajraj Singh v. STAT*, reported in(1997) 1 SCC 650 and *Ramesh Chandra Sankla v. Vikram Cement*, reported in (2008) 14 SCC 58, to bolster his contention that grant of license is



mere a formality and once the marketing committee accepted license fee from the petitioner and allowed her to continue with the business, a fresh relationship of landlord and tenant came to be established. He submits that by virtue of writing of the petitioner's name in the license, which was granted in favour of late S. Manzoor Alam, she became a licensee.

15. Counter affidavits have been filed on behalf of respondent No. 4 and respondent No.5. It has been asserted in the counter affidavit filed on behalf of respondent No.4 that as the licensees of both the shops had already died, by virtue of the prescription in clause (3) of the license that the same is non-transferable, the licenses to use the shop could no more survive after their death. On this basis, respondent No.4 has justified the impugned order passed by the appellate authority. In the counter affidavit filed on behalf of respondent No.5, various facts have been stated in relation to the dispute between the petitioner and respondent no.5 apropos inheritance consequent upon death of S. Manzoor Alam. The dispute, which respondent No.5 has raised in the counter affidavit, is only in relation to the rival rights between the petitioner and respondent No.5 to inherit the business in shop No.59.



16. It is evident on reading of clause (3) of the license, which was issued in favour of S. Manzoor Alam in 1982 that the same was not transferable. On reading of the agreement, which has been brought on record, it is clear that it specifically mentioned that the licensee would not acquire or be entitled to any right or interest whatsoever save and except the right to enjoy or use the said building subject to the conditions of the agreement. As has already been noticed, there is clear stipulation that after expiry of the license, the licensee would be required to vacate the premises within 30 days. This is not in dispute that the license was cancelled nearly nine and half years after death of S. Manzoor Alam on the ground of total closure of the business in the shop and non-payment of arrears of rent. The death of S. Manzoor Alam, it appears, was not brought to the notice of the competent authority by the petitioner nor any of the family members. In our opinion, in view of the admitted facts and circumstances, as noted above, the life of the license issued in favour of S. Manzoor Alam came to an end immediately upon the death of S. Manzoor Alam. In such circumstance, the plea that the license, which was granted in favour of S. Manzoor Alam was subsequently renewed in the name of the petitioner, in our view, is untenable.



17. A question has been raised as to the competence of the Administrator to pass the aforesaid order with reference to clause (iii) of Section 3 of Bihar Agriculture Produce Market (Repealing) Act, 2006, on behalf of the petitioner.

18. At this juncture, we must note certain provisions under Bihar Agriculture Produce Market (Repealing) Act, 2006, whereby the Bihar Agriculture Produce Market Act, 1960, and Bihar Agriculture Produce Market Rules, 1975, framed thereunder stood repealed with effect from the date the same came into force. Section 4(1)(iii) of Bihar Agriculture Produce Market (Repealing) Act, 2006, prescribes specifically that the Administrator shall be competent to issue such direction as is deemed necessary and expedient to secure safe possession of immovable and movable assets and such directions shall be binding on the Special Officer and all others.

19. Given the facts, which are admitted, as noted above, we do not find any legal infirmity in the impugned order dated 31.07.2021 issued vide memo No.738 dated 02.08.2021. The subsequent order dated 06.08.2021 is consequential in nature, which also does not require any interference.

20. So far as submission made on behalf of the petitioner that once the petitioner is found to be in occupation of the shop in



question, she cannot be evicted without following due process of law, there cannot be any quarrel over said submission and decisions of Supreme Court and other Courts cited on her behalf in support of the said contention, the same need not be specifically mentioned.

21. At this juncture, however, it would be useful to notice Supreme Court's decision in case of **Corpn. of Calicut v. K. Sreenivasan**, reported in **(2002) 5 SCC 361**, paragraph 16 of which reads as under : -

“16. It is true that a licensee does not acquire any interest in the property by virtue of grant of licence in his favour in relation to any immovable property, but once the authority to occupy and use the same is granted in his favour by way of licence, he continues to exercise that right so long the authority has not expired or has not been determined for any reason whatsoever, meaning thereby so long the period of licence has not expired or the same has not been determined on the grounds permissible under the contract or law. Occupation of the licensee is permissive by virtue of the grant of licence in his favour; though he does not acquire any right in the property and the property remains in possession and control of the grantor, but by virtue of such a grant, he acquires a right to remain in occupation so long the licence is not revoked and/or he is not evicted from its occupation either in accordance with law or



otherwise. Main thrust of Section 2(f) of the Act is upon the expression “occupation” with authority or without authority. If a person without any authority occupies any public building he would be a trespasser and his case would be covered by the first part of Section 2(f) and would be liable to be evicted under the provisions of the Act instead of taking recourse to ordinary law by filing a properly constituted suit which is dragged on for years together. Second part of Section 2(f) deals with cases where a person is in occupation by virtue of an authority granted in his favour irrespective of the fact whether the authority is in the form of lease or licence or in any other form. So far as the case of lease of a public building is concerned, upon expiry of the period limited thereby or its determination in accordance with law, the special procedure prescribed under the Act providing speedy remedy for eviction would apply even though some interest in the immovable property is created in favour of the lessee by virtue of creation of lease in his favour. But in a case of licence, no interest in the property is created by virtue of the grant, but a person acquires a right to continue his occupation by virtue of the authority granted in his favour under the licence unless the period of licence has expired or the same has been determined or licence has been revoked and/or the licensee is evicted by the grantor. If it is held that Section 2(f) would apply only in case of lease and not in the case of licence, the position will be very



incongruous as in the case of lease, though a lessee acquires interest in the property which is a higher right, but he can be evicted under the special procedure prescribed under the law providing much speedy remedy whereas in the case of licence, a licensee, who does not acquire any interest in the property and has only some sort of right of occupation by virtue of the nature of grant in his favour so long he is not evicted, can be evicted through long-drawn ordinary procedure of filing a civil suit. This could not have been the intention of the legislature. Apart from that, out of the expressions “whether by way of lease” or “any other mode of transfer”, the expression “any other mode of transfer” is very wide and would not necessarily mean only that mode of transfer whereby a right has been created in immovable property. The expression “transfer” under the Transfer of Property Act connotes creation of some interest in immovable property. But under Section 2(f) of the Act such a restricted meaning would defeat the purpose of legislation which is impermissible. The expression “any other mode of transfer” would definitely bring within its sweep the case of a licensee where right of the grantor to occupy and continue to occupy immovable property is transferred though under law, the property remains in possession and control of the grantor. In view of the foregoing discussions, we hold that the expression “unauthorised occupation” within the meaning of Section 2(f) of the Act would



embrace within its ambit the case of the licensee as well after expiry of the period of licence or upon its determination for any reason whatsoever, as such the Estate Officer was quite justified in initiating proceeding under the Act and passing eviction order therein.”

22. It has been clearly laid down in the aforesaid decision that a licensee does not acquire any interest in the property by virtue of grant of license in his favour in relation to any immovable property. The licensee has authority to occupy and use the same, so long as the authority has not expired or has not been deprived for any reason whatsoever.

23. In such view of the matter, no interference is required by this Court in the present proceeding under Article 226 of the Constitution of India.

24. This application is accordingly dismissed.

25. There shall, however, be no order as to cost.

(Chakradhari Sharan Singh, J)

(Madhuresh Prasad, J)

Pawan/-

AFR/NAFR	NAFR
CAV DATE	N/A
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