

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12578 of 2019

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Shailja Vajpeyi, wife of Sri Shashank Shekhar, resident of House No. L 3/1 (B), Sri Krishnapuri, P.S. Sri Krishnapuri, District Patna.

... .. Petitioner/s

Versus

1. The Patna Municipal Corporation through Municipal Commissioner, Maurya Lok, Dak Bunglow Road, Police Station- Kotwali, District- Patna.
2. The Municipal Commissioner, Patna Municipal Corporation, Maurya Lok, Dak Bunglow Road, Police Station- Kotwali, District- Patna.
3. The Additional Municipal Commissioner, Patna Municipal Corporation.
4. The Executive Officer, New Capital Circle, Patna Municipal Corporation, Patna.
5. The Executive Engineer, Patna Municipal Corporation, Patna.
6. The Project Director, Patna Smart City, Maurya Patna. All at Maurya Lok, Dak Bunglow Road, Police Station- Kotwali, District- Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Shrawan Kumar, Sr. Advocate Mr. Dinesh Maharaj, Advocate
For the Respondent/s	:	Mr. Bindhayachal Singh, Sr. Advocate Mr. Vipin Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

CAV JUDGMENT

Date : 31-08-2022

The petitioner, in the present writ application under Article 226 of the Constitution of India has claimed his right, title and possession in respect of Plot No. 8 admeasuring 1989 sq. ft. having following description:-

*“Boundaries of the land :-
North: P.A.C. 10 feet wide service road and Pearl Cinema House.
South: Proposed P.A.C. Road
East : Plot No. 9*



West : Plot No. 4 & 7”

2. The petitioner has approached this Court invoking writ jurisdiction aggrieved by the action of the respondent Patna Municipal Corporation (for short ‘the Corporation’) of demolition of the commercial building situate over the said land. The petitioner has claimed that the said land was duly purchased by her way back in 1987 through a registered deed of absolute sale executed by one Jagar Nath Prasad.

3. The petitioner’s claim of his right, title over the said land has been seriously disputed by the respondents in their counter affidavit and in the submissions made on their behalf. In response to an observation made by this Court that disputed questions of facts touching title and possession of an immovable property may not be gone into by this Court in writ jurisdiction in the present facts and circumstances, Mr. Shrawan Kumar, learned Senior Counsel emphatically answered in negative and has contended that the petitioner can maintain the writ petition for the reliefs as sought, based on the materials on record.

4. In view of the aforesaid submission made by learned Senior Counsel, the Court has proceeded to go into the factual as well as the connected legal issues involved in this case. The petitioner has asserted in the writ petition that the then Secretary of State for India in Council i.e. the Secretary of the State had granted



lease for a term of 50 years renewable for further period of 50 years to the then Patna Administrative Committee (PAC in short) of which the Corporation is admittedly the successor body, for an area of land admeasuring 125190 sq. ft. (approx 92 Kathas) bounded as under:

“South : Harding Road

East : Patna Administrative Committee’s Urdu School Patna Jail Fencing.

West : Strip of land 53’ feet wide east of approach road from Harding Road to New Market.

North : Strip of Government land, average width 40’

5. The aforesaid lease deed has not been brought on record. It is the petitioner’s further case that PAC had thereafter granted sub-lease in favour of Sri. Dharma Das Sarkar w.e.f. 20.10.1951 for a period of 30 years with the option of renewal but not beyond the period of lease granted to the PAC by the State. One of the conditions in the said lease deed was to erect a building on the land within one year as per the specification sanctioned by the Government vide letter No. 8030B dated 18.06.2049. It is the petitioner’s further case that said Dharma Das Sarkar applied to the Corporation for transfer of his allotted plot, which was renumbered as Plot No.19, Holding No. 119/151 in Circle No. 235 in favour of one Jagar Nath Prasad which was granted by Memo



No. 9447 dated 27.12.1973. From Clause-19 of the lease deed executed by the PAC in favour of said Dharma Das Sarkar, a photostat copy of the original of which has been brought on record by way of Annexure-1, it appears that a lessee was proscribed from transferring his lease rights by way of sale /mortgage/ transfer/ assignment/subletting or parting with the possession of the whole or any part of the land or whole or any part of the building, except with the previous consent in writing of the Chairman of the PAC. Clause-19 of the said lease deed is being reproduced hereinbelow:-

“That except with the previous consent in writing of the Chairman Patna Administration Committee, the lessee shall not sell, mortgage, transfer, assign, sub-let or part with the possession of the whole or any part of the said land or the whole or any part of any building for the time being erected thereon.”

6. It is significant to note that there is a statement made in paragraph-9 of the writ petition that Plot No. 8 which was allotted to Dharma Das Sarkar was renumbered as Plot No. 19. There is no evidence nor any chit of paper to support the said statement made in paragraph-9 of the writ petition that Plot No. 8 was renumbered as Plot No.19.

7. In the affidavit portion of the writ petition though it has been stated that the averment made in paragraph-9 of the writ



petition is true to the petitioner's information derived from the records, there is no reference to any record to indicate that the said Plot No.8 was renumbered as Plot No. 19. A photo copy of typed copy of letter dated 27.12.1973 purportedly issued under the signature of the Assistant Administrator, New Capital Circle has been brought on record by way of Annexure-2 to the writ petition wherein the hand written sign and number "+8" are mentioned after Plot No. 19 in respect of which permission to transfer was granted in terms of the provision made in Clause-19 of the terms and conditions of the agreement. The said hand written part in the subject of letter dated 17.12.1973 does not figure in the body of the letter which reads as under:-

"The Administrator, Patna Municipal Corporation vide his order dated 22.12.73 has been pleased to grant permission to you to transfer Plot No. 19, Holding No. 119/151 in Circle No. 235 as per provision made in Clause 19 of the terms and conditions of the lease agreement with Sri Jagarnath Pd. subject to payment of rent upto 1973-74."

8. It is peculiar to note that typed copy of the said Annexure has been brought on record wherein the said sign and number "+8" do not figure. It is further asserted in the writ petition that Dharma Das Sarkar sold the land to Jagar Nath Prasad vide



sale deed dated 07.06.1974, a copy of which has been brought on record by way of Annexure-3 to the writ petition.

9. This is noted at this juncture that period of lease granted by PAC in favour of Dharam Das Sarkar was admittedly for a term of 30 years beginning from 20.10.1951, as can be seen from Annexure-2, which stood terminated on completion of the said period in terms of the said agreement itself on 19.10.1981. There was an option for renewal of the lease subject to the optional renewal of the lease of the land granted by the Government to the PAC. As has been noted hereinabove, it was clearly mentioned in the lease deed that no such lease between the PAC and lessee (Dharam Das Sarkar) would be renewed for a period beyond the term of lease granted by the Government to the PAC and that the lease by the PAC to the tenant would not confer on its lessee any right, not conferred by the lease executed by the Government in favour of PAC.

10. At this juncture, it is apt to mention that the lease deed executed by the Government in favour of PAC is not there on record. Secondly, in the typed copy of the lease deed following has been mentioned in paragraph-2 of page 2 thereof :-

“That the lease between the Patna Administration Committee and the Patna Administration Committee’s



lessees (Sri Dharma Das Sarkar) shall hold good for a period of 30 (Thirty) years commencing from the 20th day of October 1981 with the option of renewal.”

11. The underlined portion of the typed copy as quoted above is factually incorrect and in Court's opinion it is deliberately misleading which cannot be treated to be a mere typographical error. This is an apparent attempt on the part of the petitioner to obtain relief from this Court, interim or final, by misleading this Court. This observation the Court is making taking into account the conduct of the petitioner in relation to the pleadings to the extent description of plot in question has been furnished, via which also the petitioner has attempted to mislead this Court.

12. There is no pleading on record to demonstrate exercise of option by the said Jagar Nath Prasad for renewal of the lease, who, according to the petitioner, had purchased the rights from Dharam Das Sarkar by a sale deed dated 07.06.1974. It has been stated that after expiry of the term of lease, said Jagar Nath Prasad applied for mutation of his name before Patna Municipal Corporation on 25.02.1983 which was allowed soon thereafter on 11.03.1983.



13. It is the petitioner's further case that said Jagar Nath Prasad, by a deed of absolute sale dated 02.06.1987, for consideration transferred the land admeasuring 1989 sq. ft. to the petitioner with entire building vide Municipal Survey Plot No. 8, Ward No. 34, Circle No. 235, Holding No. 124/175, present Holding No. 175. The petitioner applied for mutation which was granted by the Corporation on 30.11.1989.

14. On the basis of said deed of absolute sale dated 02.06.1987 executed by Jagar Nath Prasad in favour of the petitioner, the petitioner is claiming her right, title and possession over the land and building in question.

15. There can be no two opinions that Jagar Nath Prasad could not have acquired any right better than the right in respect of the land in question which Dharma Das Sarkar had acquired by virtue of lease deed for a period of 30 years commencing from 20.10.1951. Execution of the deed of absolute sale dated 02.06.1987 was, thus, apparently a sham transaction effecting no transfer of right of any sort in favour of the petitioner.

16. It has been stated in the writ petition that the petitioner has been paying municipal rent in respect of the said building right from 1978-1989 and has paid the latest municipal rent for the year 2019-2020. It has further been stated that adjacent



to the said land and building in the north-west there was a vacant space admeasuring about 3450 sq. ft.. The petitioner had applied before the Corporation seeking permission to fence the said land and grow plants. A permission was granted by the concerned Assistant Administrator, New Capital Circle, Patna Municipal Corporation for fencing the said land with barbed wires. A copy of the said permission has been brought on record by way of Annexure-8 to the writ petition. From the said letter dated 07.03.1992 (Annexure-8), it appears that the allotment by the Corporation in respect of the land admeasuring 3450 sq. ft. was for a term of three years and the petitioner was required to pay a sum of Rs. 400/- as annual-rental in respect thereof. It was further mentioned in the letter dated 07.03.1992 that the Corporation would withdraw temporary allotment in respect of land as and when required.

17. It has been stated in the writ petition that the petitioner's husband is a special correspondent in a newspaper and is posted at Dhanbad in Jharkhand. When he learnt that the said building was marked with red colour for its demolition, he immediately rushed to Patna and met the Municipal Commissioner with documents and a representation. He was assured that the building would not be subjected to demolition. However, on



12.06.2019, the petitioner learnt that the building was demolished from the northern side, from the roof to the ground. It is stated in the writ petition that a newspaper publication press is running in the building and three laptops, one Desktop Computer with monitor and other electrical fittings have been taken away; two almirahs have been broken and certain other articles have been looted. The petitioner has further asserted that the respondents have indulged in looting and damaging the property.

18. It is an admitted fact, however, that the petitioner has not lodged any criminal case alleging plundering of the articles.

19. As has been noted at the very outset, Mr. Shrawan Kumar, learned Senior Counsel has submitted that this Court, considering the facts of the case, should restrain the respondents from taking any action against the petitioner in relation to the building in question.

20. A counter affidavit has been filed on behalf of the Corporation, wherein disputing the petitioner's claim it has been stated that the Corporation itself being a lessee of the land was/is incompetent to allow transfer of the property through absolute sale. It has further been stated that a team was constituted under the supervision of Additional Municipal Commissioner (Enforcement) for removal of encroachments from lands of the



Corporation in the area of Ashok Market, Kabari Market etc., from the north of Patna Junction to Harding Road and northeast of GPO Golambar for the purpose of development of the said area under Patna Smart City project. Upon completion of all necessary legal formalities the work of removal of encroachment was carried on. Further, since the period of lease originally granted in favour of Dharma Das Sarkar has already expired, the petitioner is not entitled to claim any right or interest in the land. It has further been stated that before removal of encroachment in the area concerned, the buildings/constructions to be removed were first marked in red colour and thereafter, after making announcements and advertisement through microphone using loudspeakers, the encroachments were removed. It has been asserted that since no permission was granted by the Corporation for transfer by way of absolute sale, the transfer made by the lessee Dharam Das Sarkar to Jagar Nath Prasad dated 07.06.1974 is void *ab initio*. Since the initial absolute sale of the concerned land by Dharma Das Sarkar to Jagar Nath Prasad was itself void *ab initio*, any subsequent absolute sale made to any person also becomes void *ab initio* and no legal right can be said to have accrued to any subsequent purchaser of the land. The possession over the said property was wrongfully acquired by the petitioner and the mutation of the land



was carried out under misrepresentation of the fact of execution of absolute sale of the said concerned land. Disputing the petitioner's claim thus, it is the case of the Corporation that the petitioner has no right to maintain this writ application.

21. Mr. Shrawan Kumar, learned Senior Counsel appearing on behalf of the petitioner has submitted, relying on a Full Bench decision of this Court reported in **1977 BLJR (25) 581 (Ritalal Choudhary and Ors. Vs. District Magistrate & Ors.)** that the petitioner being in possession over the land in question could be evicted only by following due process of law. He has also relied on a decision of learned Single Judge of this Court in case of **Sushila Srivastava and Ors. Vs. State of Bihar & Ors. reported in 2000(1) PLJR 301** to submit that the petitioner, who is in possession of the land, cannot be forcefully evicted from the premises without following due procedure in accordance with law. He has further submitted that, in any case, as the period of 50 years of lease granted by the State to the Corporation had expired, the Corporation is unauthorized to take steps for eviction of the petitioner from the land in question. Action if any against the petitioner could have been taken by the State Government and not by the Corporation as the Corporation has no right, title and interest in respect of the land in question. He has further relied on



Supreme Court's decision in case of *Rame Gowda vs. M. Varadappa Naidu* reported in *2004(1) SCC 769* to contend that an occupant in settled possession cannot be dispossessed without recourse to law.

22. Mr. Bindhyachal Singh, learned Senior Counsel appearing on behalf of the Corporation, on the other hand, has submitted that this writ petition deserves to be dismissed on the sole ground that the petitioner has attempted to mislead this Court by stating wrong facts and bringing on record misleading documents. He has submitted that according to the petitioner's own case it was Plot No. 8, which was settled in favour of Dharma Das Sarkar. On the basis of permission granted by the Corporation for transfer of lease rights in respect of Plot No. 19, the petitioner has falsely claimed that the said Plot No. 8 was transferred through absolute sale deed in favour of Jagar Nath Prasad. There was no question of Jagar Nath Prasad executing absolute sale deed on 02.06.1987 after expiry of the term of the original lease. Applying the legal maxim '*Nemo dat quod non habet*' he has submitted that, in any case, the petitioner cannot claim to have acquired a right or title better than that emanating from the original lease deed in favour of Dharam Das Sarkar. He has submitted that entire transaction right from execution of sale deed by Dharma Das



Sarkar in favour of Jagar Nath Prasad in respect of Plot No. 8 is apparently fraudulent and sham, as the permission was not in respect of Plot No. 8 rather the same was in respect of Plot no. 19. There is no chit of paper to demonstrate that Plot No. 8 was renumbered as Plot No. 19. He submits that this writ application deserves to be dismissed at the very threshold without entering into the merits of the case as the petitioner has not approached this Court with clean hands.

23. I have carefully gone through the rival pleadings made on behalf of the parties on record and have given my anxious consideration to the rival submissions made on their behalf.

24. In my view, this writ petition deserves to be dismissed on the sole ground that the petitioner has not approached this Court with clean hands and has attempted to mislead this Court by making false statements and bringing on records copies of the documents which on their face appear to be manufactured.

25. Mr. Bindhyachal Singh, learned Senior Counsel is correct in his submission that though body of Annexure-2 of the writ petition refers to grant of permission for transfer of Plot No. 19, on the strength of the said permission granted, the petitioner claims to have acquired title and possession based on execution of deed of absolute sale in respect of Plot No.8. Overwriting, without



any initial in Annexure-2 by adding the figure/number “+8” in the subject of letter dated 27.12.1973 is manifest. For the reasons best known to the petitioner, in the typed copy of the said letter dated 27.12.1973, “+8” has not been incorporated. There is no basis available on record to accept the petitioner’s plea that the said Plot No. 8 was subsequently renumbered as Plot No. 19. Further, the Court takes exception to mentioning of ‘20.10.1981’ in paragraph-2 of the typed copy of Annexure-1 wherein the date of commencement of lease between PAC and Dharma Das Sarkar has been typed as “20th day of October 1981” in place of “20th day of October 1951”. The said part of the typed copy of lease has been certified to be true copy of its original by learned counsel for the petitioner.

26. I totally disapprove such evident lapse in filing documents in a proceeding under Article 226 of the Constitution of India which is decided mainly on the basis of pleadings on affidavit and documents in support thereof.

27. I find substance in submission made on behalf of the Corporation that execution of deed of absolute sale by Dharma Das Sarkar in favour of Jagar Nath Prasad dated 07.06.1974 was a sham transaction as Dharma Das Sarkar had admittedly no right as a lessee to execute the absolute sale deed, more so in respect of



Plot No. 8. In no case, the petitioner can be said to have acquired any title on the strength of the absolute sale deed executed by Jagar Nath Prasad on 02.06.1987, on which date he had, in any case, no subsisting right which he could transfer.

28. Interestingly, Mr. Shrawan Kumar, learned Senior Counsel appearing on behalf of the petitioner has submitted that as the Corporation has no right after expiry of the term of lease of 50 years initially granted in favour of the PAC, the Corporation could not have taken any action against the petitioner and action if any could be taken by the State Government only.

29. The said submission deserves to be outrightly rejected in view of the own pleadings in the writ petition that the petitioner had applied for permission before the Corporation to fence and grow plants over a vacant space of about 3450 sq. ft. adjacent to the building in 1991 which was granted on 07.03.1992, on payment of annual rent of Rs. 400/-. The petitioner, in the Court's opinion, in view of Section 116 of the Evidence Act is estopped from raising dispute of the title of the Corporation with whom he himself has pleaded relationship of landlord and tenant, which is though disputed by the Corporation in the counter affidavit.

It is well settled legal principle that one cannot take advantage of one part of an instrument while rejecting the rest. It is



impermissible for a person to have the benefit of an instrument while questioning the same. He has either to affirm or dis-affirm the transaction. A party cannot be allowed to approbate and reprobate at the same time.

30. Since this Court, in the light of submissions advanced by learned Senior Counsel for the petitioner, has examined the petitioner's claim of his title in respect of the land and building in question, the Court is of the view that it would be an exercise in futility to consider the petitioner's claim in the light of this Court's decisions in case of ***Ritalal Choudhary and Ors.*** (supra), ***Sushila Srivastava and Ors.*** (supra) and ***Rame Gawda vs. M. Varadappa Naidu*** (supra). The conduct of the petitioner in pursuing the matter before this Court in the manner as noted above is reprehensible and disentitles him from any relief in exercise of equitable jurisdiction under Article 226 of the Constitution of India.

31. From the discussions as above, the Court is of the view that since the petitioner had attempted to pollute the stream of justice by taking false plea in a proceeding under Article 226 of the Constitution of India, she is not entitled to any relief, interim or final. One who touches the pure fountain of justice with tainted hands is not entitled to any relief in a discretionary writ proceeding. [***Dalip Singh v. State of U.P., (2010) 2 SCC 114***]



32. In case of *S.P. Chengalvaraya Naidu vs. Jagannath* reported in (1994) 1 SCC 1 the Supreme Court has held that a person whose case is based on falsehood has no right to approach the Court. In *Amar Singh vs. Union of India* reported in (2011) 7 SCC 69 the Supreme Court has cautioned that an action at law is not a game of chess and therefore, a litigant cannot prevaricate and take inconsistent positions. Writ jurisdiction is a discretionary equitable remedy which can be denied if a litigant approaches the Court with incorrect facts or rests his case on falsehood.

It is admitted case of the petitioner that the part of the building has already been demolished in an exercise carried out by the Corporation for removal of encroachment.

33. For the reasons noted above in the Court’s opinion this writ application deserves to be dismissed, in the facts and circumstances with costs.

34. This writ application is accordingly dismissed with a cost of Rs. 10,000/- payable by the petitioner to respondent No. 2 within two months from today.

(Chakradhari Sharan Singh, J)

Rajesh/Anand

AFR/NAFR	NAFR
CAV DATE	24.08.2022
Uploading Date	05.09.2022
Transmission Date	NA

