

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7445 of 2004

Ashok Kumar, son of late Ram Kishore Sharma, resident of Mohalla-Kadamkuan, P.S. Kadamkuan, District-Patna

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Collector, Patna

... .. Respondent/s

with
Civil Writ Jurisdiction Case No. 9593 of 2004

Ashok Kumar, son of late Ram Kishore Sharma, resident of Kadamkuan, P.S. Kadamkuan, District-Patna

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Commissioner-cum-Secretary, Department of Revenue and Land Reforms, Government of Bihar, Patna
3. The Commissioner, Patna Division, Patna
4. The Collector-cum-District Magistrate, Patna
5. The Circle Officer, Patna Circle, Patna.

... .. Respondent/s

Appearance :

Appearance :

(In Civil Writ Jurisdiction Case No. 7445 of 2004)

For the Petitioner/s : Mr. Ajit Kumar Sinha, Sr. Advocate
Ms.Nivedita Nirvikar, Sr. Advocate

For the Respondent No. 3: Mr. Natraj Verma, Advocate

For the State : Mr. Shankar Kumar Thakur, AC to GP-27

(In Civil Writ Jurisdiction Case No. 9593 of 2004)

For the Petitioner/s : Ms. Nivedita Nirvikar, Sr. Advocate

For the Respondent No. 3: Mr. Natraj Verma, Advocate

For the State : Mr. Shankar Kumar Thakur, AC to GP-27

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
CAV JUDGMENT

Date : 19-09-2022

Regard being had to the commonality of the controversy

in both the aforesaid writ petitions, it was thought apposite to



hear them analogously and accordingly, they were heard together with the consent of the parties and are being disposed off by the present singular order.

2. The first writ petition i.e. CWJC No, 7445 of 2004 has been filed for quashing the order dated 28.02.2004 passed by the Collector, Patna, whereby and whereunder, the prayer made by the petitioner for considering him as the original lessee, has been rejected, whereas the second writ petition i.e. CWJC No. 9593 of 2004 has been filed for quashing the order dated 02.08.2004, contained in Memo dated 31.07.2004, whereby the petitioner has been informed that while resuming the Khas Mahal Land settled vide temporary lease deed, bearing plot no. 52, Block-C, admeasuring an area of 5 katha and 8 dhurs, along with the structures made thereon, in light of the order contained in letter no. 786 dated 10.07.2004 of the Revenue and Land Reforms Department, Bihar, Patna, it is ordered to take the said land along with the construction made thereon into Government's possession, thus the possession of the same be handed over to the Circle Officer, Patna Sadar within one month. It is thus apparent that the land in question is the same in both the aforesaid two cases.

3. For the sake of convenience the facts of the first case



would be referred to hereinafter. The brief facts of the case, according to the petitioner are that the State of Bihar settled a Khas Mahal land admeasuring 5 katha and 8 dhurs, appertaining to plot no. 52, Block-C, Halka no. 5, Thana no. 20A, situated at Kadamkuan in the name of one Sadashiv Prasad by means of a registered deed of perpetual lease dated 15.11.1942 (registered on 17.11.1942) and the lessee was given an absolute right of transfer as also there was no need to take any kind of permission from the State Government before transfer or sale of the same, as is apparent from the registered sale deed annexed as Annexure-1 to the second writ petition. The aforesaid Shri Sadashiv Prasad as also his wife Smt. Saraswati Devi died in the year 1976, whereafter one Shri P.R. Prasad and his two brothers became the rightful owner of the entire house/plot in question and their names were mutated, subsequently after the death of the aforesaid Sadashiv Prasad and Smt. Saraswati Devi. It has been further stated by the learned counsel for the petitioner that the eldest daughter of late Sadashiv Prasad and Smt. Saraswati Devi namely, Malti Devi had filed a Title Suit bearing Title Suit No. 77 of 1980 before the Ld. court of Subordinate Judge, Patna for partition of the house in question, situated at Patna and other parental properties situated at Buxar, claiming 1/8th share



therein. The said Malti Devi died subsequently & was substituted by one Ajit Kumar and his brothers as plaintiffs in the aforesaid Title Suit No. 77 of 1980. It has also been stated by the learned counsel for the petitioner that in the year 1986-87, the ground floor of the house in question was let out to one M/s. Atul Carrier for commercial purposes, whereafter a complaint was made in this regard and upon enquiry by the government authorities, the allegation was found to be true, as such a proposal for cancellation of the lease deed was made by the Collector, however, one time relaxation was given to the effect that if the existing lessees wanted to take a fresh lease, they could take the same on payment of penal rent and *salami* at the market rate, whereupon one of the sons of late Sadashiv Prasad namely Shri P.R. Prasad had engaged in correspondence with the Collector, Patna and vide letter dated 18.09.2001, the said P.R. Prasad had informed the Collector, Patna that he was ready to enter into a fresh lease with respect to the aforesaid land in question but since no notice has been issued with regard to cancellation of the lease in question, cancelling the lease deed, without granting any opportunity to explain the matter personally, would amount to violation of the principles of natural justice.



4. The respondent no. 3 namely Ajit Kumar had then appeared before the Collector, Patna and had accepted the proposal of entering into a fresh lease deed. In the meantime, in the month of November, 2001, the aforesaid Shri P.R. Prasad had died and after his death, his daughter, namely, Ms. Ratee Prasad for herself and on behalf of her mother, her two uncles, two aunts and a cousin had, on the basis of a registered power of attorney, executed a registered sale deed dated 27.12.2001 in favour of the petitioner, whereafter the possession of the land/ house in question as well as its whole right was settled with the petitioner. Meanwhile, the petitioner came to know that the respondent no. 3 had filed a petition before the Collector, Patna for grant of fresh lease in his favour, leading to registration of a case bearing Case No. 4 of 2002, whereupon he had intervened in the said case and had prayed for making him a party but the Collector, Patna vide order dated 20.11.2002 had rejected the intervention petition filed by the petitioner, resulting in the petitioner challenging the same before this Hon'ble Court by filing a writ petition bearing CWJC No. 244 of 2003 and this Hon'ble Court by an order dated 30.04.2003 had set aside the order dt. 20.11.2002, passed by the Collector, Patna and allowed the said writ petition. The petitioner was then impleaded as a



party in the aforesaid Case No. 4 of 2002, however, the case of the petitioner was rejected vide Order dated 28.02.2004 on two grounds; firstly that no permission was taken before transfer, as per the circular of the Secretary, Revenue Department of the year 1993, by depositing 50 per cent of the market value and secondly the deed was registered in favour of the petitioner at Mumbai i.e. outside the State of Bihar.

5. The learned Senior Counsel for the petitioner Shri Ajit Kumar Sinha has submitted that the impugned order dated 28.02.2004 is bad on the ground that firstly the original lease dated 15.11.1942 was executed in favour of late Sadashiv Prasad with effect from the month of November, 1935 permanently from generation to generation with full rights of transfer of buildings and all erected buildings and structures thereon, hence no permission was required from any authority for transfer of land in favour of the petitioner. At this juncture, it would be relevant to reproduce herein below the relevant portion of the lease deed dated 15.11.1942:-

“To have and to hold the said piece or parcel of land here-in-before expressed to be demised, with all the rights, easements and appurtenances, unto the lessee from the day, November, of 1935, permanently from generation to generation with full rights of transfer and



buildings and erecting all buildings and structures thereon and subject to the terms and conditions hereinafter contained yielding and paying therefor yearly and every year the rent of Rs. 8/2 by equal quarterly payments on 1st April, 1st July, 1st October and 2nd January free and clear of all rates, taxes, charges assessments and payments, whatsoever, now charged or hereafter to be charged upon the said demised premises or any part thereof or upon the rent thereof or any part thereof or upon the lessor.”

6. The learned senior counsel for the petitioner has further submitted that as far as deposit of 50 percent of the market value for the purposes of transfer of the lease deed in question is concerned, a bare perusal of the lease deed dated 15.11.1942 would show that no such precondition has been mentioned in the lease, which is a perpetual lease with full rights to transfer from generation to generation. As regards, the other ground for rejection of the case of the petitioner, as mentioned in the impugned order dated 28.02.2004, to the effect that since the sale deed has been registered in favour of the petitioner at Mumbai, the same is not valid inasmuch as such sale deeds have not been granted recognition by the government of Bihar, it is submitted by the learned senior counsel for the petitioner that Section 30 (2) of the Registration Act was omitted with effect from 24.09.2001, whereas the transfer of land had taken place at



Mumbai on 27.12.2001, but the office of the Inspector General of Registration and Controller of Stamp, State of Maharashtra, vide communication dated 04.04.2002, has informed that it has issued an Order, whereby the Government of Maharashtra has given effect to "The registration and other related laws (Amendment) Act, 2001", published by the Central Government vide Bill No. 48/2001 dated 24.9.2001, with effect from 01.01.2002, since the said Amendment Act, though was published in the gazette on 24.09.2001, but the date of implementation was not mentioned therein, thus the provision contained in Section 30(2) of the Indian Registration Act has been declared to be valid till 31.12.2001, in the presidency town of Mumbai. In this regard, it has also been submitted that since the subject "registration" finds place in the Concurrent List i.e in List-III of the Seventh Schedule to the Constitution of India, hence, no cut off date was prescribed with regard to the date of enforcement of the amendments made in the Registration Act in the year 2001 and instead liberty was granted to the respective States to fix the date of implementation, as per their suitability. Accordingly, the Government of Maharashtra fixed the date of implementation of the said amendments as 01.01.2002. As far as the Government of Bihar is concerned, it



has accepted all the deeds registered outside the State without any cut off date but had directed for deposit of the differential amount with the office of the Registrar, thus it is submitted that all the deeds registered outside the State of Bihar has been considered to be valid and operative by the Govt. of Bihar.

7. As regards the argument of the respondent no. 3 to the effect that as per the State of Bihar Amendment, vide Bihar Act 6 of 1991, implemented with effect from 08.08.1991, the documents relating to immovable property are required to be presented for registration in the office of the Sub-Registrar within whose sub-district or district, the whole of the property to which such documents relates is situated in the State of Bihar, it has been submitted by the Ld. Sr. Counsel for the petitioner that Section 28 itself is subject to Part-V of the Registration Act, 1908 which also contains Section 30(1) and at the relevant time i.e. on the date of registration of the sale deed at Mumbai on 27.12.2001, Section 30(2) of the Indian Registration Act was also in force, which empowers a Registrar of a district including a presidency town to receive and register any document referred to in Section 28 without regard to the situation in any part of India of the property to which the document relates. Thus, it is submitted that the central enactment would prevail over the state



enactment inasmuch as the State is denuded of its competence and jurisdiction to legislate under Article 254 read with Article 246(2) of the Constitution of India, hence if any provision of law made by the legislature of a State is repugnant or contrary to any provision of law made by the Parliament, which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then subject to the provision of clause (ii), the law made by the Parliament shall prevail and the law made by the legislature of the State shall, to the extent of repugnancy, be void. It is also submitted that even sub-section (1) of Section 30 of the Indian Registration Act, uses the expression “any Registrar”, hence since the word "any" includes "all", the sale deed executed at Mumbai cannot be said to be void. It is stated that the Government of Bihar has issued a circular dated 22.08.2002, whereby and whereunder the land transferred and registered outside the State of Bihar would entail payment of differential amount of stamp duty and in pursuance thereof the petitioner has already paid differential amount to the tune of Rs. 1,82,500/-, which is apparent from the certificate dated 29.10.2007, issued by the District Sub-registrar, Patna and the same has also been accepted by the competent authority. It is



contended that the Govt. of Bihar by a notification dt. 18.7.2002 has also permitted transfer of property, registered outside the State of Bihar, subject to deposit of the differential amount. In this regard, the learned senior counsel for the petitioner has relied on a judgment rendered by the Hon'ble Delhi High Court in the case *of Gati Cargo Management Services vs. SBL Industries Limited* reported in (2014) SCC online Del 3297, relevant paragraphs whereof are reproduced herein below:-

"17. I have heard the learned counsel for the parties.

18. The issue to be addressed in the present proceedings is whether the order dated 30.11.2011 is required to be recalled as the said order was passed in the absence of the applicants and without notice to them. The second question that is to be considered is whether the registration of the subject sale deeds could be cancelled on account of the subject property being situated in Ranchi, which at the material time was a part of the State of Bihar, and the registration being effected by the Sub-Registrar, Mumbai. The essential controversy being whether by virtue of Section 30(2) of the Registration Act, 1908 (hereafter referred to as the 'Act') an immovable property situated in Bihar could be registered by the Registrar of Assurances, Mumbai.

19. The principles of natural justice are now well established. It is well settled that an opportunity of being heard before an adverse order is passed in judicial proceedings is an integral part of principles of natural



justice and Article 14 of the Constitution of India. In the present case, it is indisputable that the order cancelling the subject sale deeds, which were executed in favour of the applicants and a direction for the applicants to be dispossessed of the property, is an order adverse to the applicants. The said order thus could not be passed without due notice to them and without a fair opportunity of being heard. Although, the Official Liquidator had sought orders adverse to the applicants, they were not made parties to the proceedings. This fundamental flaw in the procedure would vitiate the impugned order dated 30.11.2011 and the same is liable to be recalled on this ground alone.

20. In view of the above, it is not necessary to consider the controversy with regard to cancellation of the registration of the subject sale deeds. However, since I have heard extensive arguments on this question, I deem it appropriate to consider the same. The sale deeds in question were executed on 07.02.2001 and registered with the Sub-Registrar, Mumbai on 07.02.2001. At the relevant time, Sections 28 and 30 of the Act as applicable to the State of Bihar read as under:-

“28. Place for registering documents relating to land. - Save as in this Part otherwise provided every document mentioned in clauses (a), (b), (c), (d) & (e) of sub-section 1 and sub-section (2) of section 17 insofar as such documents affect immovable property and in clauses (a), (b), (c) and (cc) of section 18 shall be presented for registration in the office of the Sub-Registrar within whose sub-district or district the whole of the property to which such document relates is situated in the State of



Bihar.

xxxx xxxx xxxx xxxx xxxx

30. Registration by Registrars in certain cases. - (1) Any Registrar may in his discretion receive and register any document which might be registered by any Sub-Registrar subordinate to him.”

21. By virtue of the Registration (Bihar Amendment) Act, 1991 enacted by the legislature of the State of Bihar, the Act as applicable to the State of Bihar was amended; Section 28 of the Act was amended to read as quoted above and Subsection (2) of Section 30 of the Act was omitted. Prior to the said amendments, Sections 28 and 30 of the Act read as under:-

“28. Place for registering documents relating to land. - Save as in this Part otherwise provided, every document mentioned in section 17, sub-section (1), clauses (a), (b), (c), (d) and (e), section 17, sub-section (2), insofar as such document affects immovable property, and section 18, clauses (a), (b)(c) and (cc), shall be presented for registration in the office of a Sub-Registrar within whose sub-district the whole or some portion of the property to which such document relates is situate.

xxxx xxxx xxxx xxxx xxxx

30. Registration by Registrars in certain cases. - (1) Any Registrar may in his discretion receive and register any document which might be registered by any Sub-Registrar subordinate to him.

(2) The Registrar of a district in which a Presidency-



Town is included and the Registrar of the Delhi district may receive and register any document referred to in section 28 without regard to the situation in any part of India of the property to which the document relates.”

22. *At the material time of execution of the subject sale deeds, the aforesaid unamended provisions were on the statute book as applicable to the State of Maharashtra. By virtue of ‘The Registration and Other Related Laws (Amendment) Act, 2001 (Act 48 of 2001) enacted by the Parliament, sub-section (2) of Section 30 of the Act was deleted with effect from 24.09.2001.*

23. *Given this situation, the question arises as to whether the existing law-the Registration Act, 1908 would prevail despite the enactment of the Registration (Bihar Amendment) Act, 1991. In my view, this controversy can best be answered by a reference to Article 254 of the Constitution of India. The Registration Act, 1908 occupies the field falling under Entry 6 of the Concurrent List, thus, by virtue of Article 246(2) of the Constitution of India, the Parliament as well as the State Legislature would have the power to legislate in respect of the subject matter. Article 254 of the Constitution of India is reproduced below:-*

“254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States.— (1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the



matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.”

24. By virtue of Article 254(1) of the Constitution, in the event of any conflict of laws enacted by a State Legislature and by the Parliament in respect of matters listed in the concurrent list, the legislation as enacted by the Parliament would prevail. In a situation, where a State Legislation has obtained the President's assent, the same would prevail in that State. Although, in the present case, there are no two different enactments, however, the principles that are



enunciated in Article 254 of the Constitution of India would be applicable. Thus, in my view, the Registration Act, 1908 as amended by the Registration (Bihar Amendment) Act, 1991, would prevail over the existing law (i.e pre-constitutional legislation) as applicable to the State of Bihar. However, it is relevant to note that the same does not imply that the law as amended by the Bihar Legislature would have extraterritorial application. The last four words of Article 254(2) of the Constitution of India - “prevail in that State” clearly restrict the applicability of the amendment to the state of Bihar. That being so, the Registration of the sale deeds in question by the registering authorities in Mumbai by virtue of Section 30(2) of the Act are not flawed.

25. It is apparent from the above that the registration authorities in the State of Maharashtra were duly empowered to register the documents in accordance with the Central Legislation-the Act. There is no dispute that Section 30 of the Act as applicable to the State of Maharashtra included Sub-section (2). Accordingly, the act of the registering authorities in Mumbai, in registering a document pertaining to the subject property situated at Ranchi cannot be faulted. The limited question that needs to be addressed is whether the deletion of Section 30(2) of the Act as applicable to Bihar by the Bihar Legislature would have the effect of voiding the registration effected by the registering authorities at Mumbai.

26. The learned counsel for the applicants had drawn my attention to the amendments to Section 28 of the Act as applicable to the territory of Pondicherry, which were



amended by the Pondicherry Act 5 of 1999 reads as under:-

*“28. Place for registering documents relating to land.-
Save as in this Part otherwise provided,-*

(a) every document mentioned in clauses (a), (b), (c), (d) and (e) of sub-section (1) and sub-section (2) of section 17, in so far as such document affects immovable property and in clauses (a), (b), (c) and (cc) of section 18 shall be presented for registration in the office of a Sub-Registrar within whose sub-district the whole or some portion of the property to which such document relates is situate in the Union Territory of Pondicherry; and

(b) any document registered outside the Union Territory of Pondicherry in contravention of the provisions of clause (a) shall be deemed to be null and void.”

27. It was pointed out that the amendment to Section 28 brought about by the Bihar Legislature did not include a clause similar to clause (b) of Section 28 of the Act as introduced by Pondicherry Act 5 of 1999. According to the applicants this indicated that it was not the intention of the Bihar Legislature to void any registrations in respect to property situated at Bihar, which were effected by the authorities in the erstwhile presidency towns and Delhi. It is settled law that the legislature expresses its intent through the language of the statute and accordingly, the language of a statute must be interpreted to discover the intention of the Legislature. In the present circumstances, one is hard pressed to find any other intention of the Bihar Legislature in deleting Section 30(2) of the Act, except to provide that



registering documents other than in a manner as expressed by Section 28 of the Act was not available. However, that in my view would not be the same as expressing a legislative intent to void registrations of all documents that are effected, by virtue of section 30(2) of the Act, by Registrars of the districts in which the erstwhile Presidency-towns are located or by the Registrar of Delhi.

28. It is relevant to note that although, the Registration (Bihar Amendment) Act, 1991 omitted Sub-section 2 of Section 30 from the Act. No attendant change was brought in Section 66 and 67 of the said Act which read as under:-

“66. Procedure after registration of documents relating to land - (1) On registering any non-testamentary document relating to immovable property, the Registrar shall forward a memorandum of such document to each Sub-Registrar subordinate to himself in whose sub-district any part of the property is situate.

(2) The Registrar shall also forward a copy of each document, together with a copy of the map or plan (if any) mentioned in Section 21, to every other Registrar in whose district any part of such property is situate.

(3) Such Registrar on receiving any such copy shall file it in his Book No. 1, and shall also send a memorandum of the copy of the Sub-Registrars subordinate to him within whose sub-district any part of the property is situate.

(4) Every Sub-Registrar receiving any memorandum under this section shall file it in his Book No. 1.



Section 67. Procedure after registration under Section 30, sub-section (2).- On any document being registered under section 30, sub-section (2), a copy of such document and of the endorsements and certificate thereon shall be forwarded to every Registrar within whose district any part of the property to which the instrument relates is situate, and the Registrar receiving such copy shall follow the procedure prescribed for him in Section 66, sub-section (1).”

29. A plain reading of the aforesaid provisions clearly indicate that in the event a document was registered under Section 30(2) of the Act by a Registrar, a copy of same would be required to be forwarded to the Registrar in whose district the immovable property is situated. Section 66(1) of the Act mandates the Registrar to forward the memorandum of the document received by him to each Sub-Registrar subordinate to him in whose sub-district any part of the property is situated. In the event the legislative intent was to disregard any document that was registered by a Registrar of the district in which the erstwhile Presidency towns are located or by the Registrar of Delhi then the provisions of Section 67 of the Act would also have been omitted. In this regard it is relevant to note that the ‘The Registration and Other Related Laws (Amendment) Act, 2001 enacted by the Parliament, which finally omitted section 30(2) of the Registration Act, 1908 also deleted section 67 of the said Act. Accordingly, in my view, the Registration effected by the registering authority at Mumbai cannot be cancelled on account of the amendment brought about by the Registration



(Bihar Amendment) Act, 1991.

30. The Calcutta High Court in the case of Rumi Sein (supra) has also upheld the registrations effected outside the State of West Bengal even though Section 30(2) of the Act had been deleted by the West Bengal Legislature. The West Bengal Legislature had enacted the West Bengal Act 17 of 1996. By virtue of Section 3 of the said Act, Sub-section (2) of Section 30 of the Act was omitted from the Act as applicable to the State of West Bengal. In the case of Rumi Sein (supra), a controversy arose with reference to two deeds of conveyance relating to the property situated in West Bengal which were registered in June 1999, at Mumbai. The Calcutta High Court considered the controversy in the following manner:-

“There is a further technical objection to the power of attorney taken by the plaintiffs. They say that Section 28 of the Registration Act, as is relevant in the context, provides that a document affecting immovable property shall be presented for registration in the office of a sub-registrar within whose sub-district the whole or some portion of the property to which such document relates is situate. The plaintiffs refer to Section 30 of the Act and the effect of such provision following its amendment. Prior to the relevant amendment of Section 30 of the Act, sub-section (2) thereof permitted, inter alia, the registrar of a district in which a presidency town was included to receive and register any document referred to in Section 28 without regard to the situation in any part of India of the property to which the document related. Sub-section



(2) was omitted from Section 30 of the Act by a West Bengal amendment that came into effect in 1997. Subsequently, there was a Central amendment that altogether removed Section 30(2) from the statute. The plaintiffs suggest that upon the West Bengal amendment coming into effect in 1997, no document affecting any immovable property in West Bengal could have been received or registered by any registrar in Mumbai. Prima facie, such argument is not acceptable. Upon the West Bengal amendment coming onto effect, no registrar of a district in West Bengal in which a presidency town was included could have received or registered a document affecting any immovable property irrespective of where the property was situate. But the registrar in Mumbai was not subject to this amendment and, notwithstanding the West Bengal amendment, the registrar in Mumbai continued to be governed by Section 30(2) of the Registration Act till it was obliterated in 2001. Since the two Mumbai documents were executed in 1999, notwithstanding the West Bengal amendment, there does not appear to have been any infirmity in the Mumbai registrar receiving and registering the same.”

31. I concur with the view expressed by the Calcutta High Court. The learned counsel for the Official Liquidator and the non-applicant have sought to distinguish the aforesaid judgment by pointing out that, whereas Section 28 of the Act had been amended by the Bihar Legislature, similar amendments to Section 28 of the Act were not carried out by the West Bengal Legislature. However, in my view, the



Amendment to Section 28 brought about by virtue of the Registration (Bihar Amendment) Act, 1991 would not be material to the controversy in the present matter. By virtue of the said amendment brought about in Section 28 of the Act, the Legislature has specified that the Sub-Registrar within whose sub-district or district, the whole property was situated, would be the authority to receive and register the documents. In the unamended Section 28, even the Sub-Registrar within whose sub-district, a portion of the property was situated, was entitled to register the document. The amendment of Section 28 is not germane to the question, whether the Registrar of assurances of erstwhile Presidency towns and Delhi, by virtue of Section 30(2) of the Act, could register the document conveying immovable property in Bihar.

32. In view of the above discussion, an order cancelling the registration of the subject sale deeds only on the ground that the same were registered by the office of the Registrar in Mumbai, is not warranted. However, it is clarified that I have not examined the contention that the registration of the said documents was fraudulent & of the transaction alleged to have been entered into in respect of these subject property is a subterfuge or otherwise invalid. It is open for the Official Liquidator (or any other affected party) to challenge the alleged transaction of sale of the subject property on all grounds including violation of Section 531A of the Companies Act, 1956 and nothing stated in the present judgment should be construed as precluding the non-applicants from raising any dispute with regard to the said



transaction. The present order can be read only to mean; (a) that the applicants are entitled to be heard in any matter, wherein the transaction entered into by them is impugned; & (b) the registration of subject sale deeds cannot be cancelled only on the ground that the sale deeds were registered in Mumbai and not by the concerned Sub-Registrar in Bihar."

8. Per contra, the learned counsel for the respondent no. 3 has submitted that the dispute in the present case hinges upon the terms and conditions mentioned in the lease deed dated 15.11.1942, executed by the Collector, Patna in favour of late Sadashiv Prasad, the maternal grandfather of the respondent no. 3. It is stated that clause-6 of the said lease deed stipulates that the premises in question cannot be used for commercial purposes, however, the same was being used as a godown by one M/s Atul Carrier, hence after enquiry and after notice the lease deed was rightly cancelled. It is further submitted that the sale deed in question i.e. the one dated 27.12.2001, on the strength of which the petitioner claims his right, title and interest in the plots/ house in question, is an agreement and not an absolute sale deed and moreover it has been registered at Mumbai whereas the Registration Act, which was amended in the year 2001 and Section 30(2) of the Indian Registration Act, 1908 was deleted, mandates presentation of documents for registration, relating to immovable property, in the office of the



Sub-Registrar within whose sub-district or district, the whole of the property to which such documents relates is situated in the State of Bihar, hence the sale deed in question, which has been registered in favour of the petitioner at Mumbai, is not valid in the State of Bihar, thus no title would pass on the basis of such a Sale deed. It is also submitted that the judgment rendered by the Hon'ble Delhi High Court in the case of **Gati Cargo Management Services** (supra) is also distinguishable in the facts and circumstances of the present case inasmuch as the property in that case was not a Khas Mahal property rather it was an ownership property of a private individual and moreover, in the present case the sale deed has been registered at Bombay after publication of The registration and other related laws (Amendment) Act, 2001, in the gazette on 24.09.2001. It is also submitted that as per the amended Section 28 of the Indian Registration Act, amended vide Bihar Act 6 of 1991, a sale deed in the State of Bihar can be registered only in the office of the Sub-Registrar within whose sub-district or district, the whole of the property to which such document relates is situated. The learned Counsel for the respondent No. 3 has also relied on a judgment reported in *2009 (4) PLJR 454 (Abhay Shankar Sinha vs. The State of Bihar & Ors.)*.



9. Per contra, the learned counsel for the State has also supported the impugned order dated 28.02.2004, passed by the learned Collector, Patna and has further relied upon "The registration and other related laws (Amendment) Act, 2001", by which Section 30 (2) of the Indian Registration Act, 1908 has been omitted as also upon the State Amendment of the year 1991 to contend that any sale deed / lease registered outside the State of Bihar after 08.08.1991, is void, hence the sale deed of the petitioner registered on 27.12.2001 is non-existent in the eyes of law. It has further been submitted that a Title Suit bearing T.S. No. 77 of 1980 is pending consideration with regard to the plots/house in question, which has been filed by the respondent no. 3, however, at this juncture itself, the learned senior counsel for the petitioner has pointed out that the said Title Suit has stood rejected. In furtherance of his argument, the learned counsel for the State has submitted that since the claim of the petitioner as also that of the respondent no. 3 has been rejected by the Collector, Patna, the petitioner is an encroacher upon the premises in question, hence is liable to be evicted.

10. I have heard the learned counsel for the parties and gone through the materials on record. A bare perusal of the impugned order dated 28.02.2004, passed by the Collector, Patna would



show that the prayer of the petitioner for considering him as the original lessee has been rejected on the following grounds:-

- (i) The original lease deed, executed in the name of late Sadashiv Prasad has been transferred by his legal heirs in favour of the petitioner without taking prior permission of the competent court/authority;
- (ii) As per the government order, prior to transfer, an amount equivalent to 50 per cent of the market value is required to be deposited which has not been deposited by the petitioner.
- (iii) The transfer deed has been executed and registered at Bombay, which is not recognized by the Govt. of Bihar.

11. As regards the first ground, on which the petitioner has been non-suited vide the impugned order dated 28.02.2004, passed by the learned Collector, Patna, to the effect that prior to transfer of the land, prior permission of the competent authority was not taken, this Court finds from the recital of the aforesaid original lease deed dated 15.11.1942 that the original lease deed had bestowed upon the lessee all the rights, easements and appurtenances, permanently from generation to generation with full rights of transfer of the leased property and all buildings and structures erected thereon. Thus, it is clear that the lease deed does not mandate seeking prior permission of any authority of the Government of Bihar, hence this Court is of the view that



the said ground, referred to in the impugned order dated 28.02.2004 to reject the case of the petitioner, is contrary to the terms and conditions stipulated in the original lease deed dated 15.11.1942, therefore, this Court finds that the said ground cannot form basis to reject the case of the petitioner.

12. Now, coming to the second ground i.e. with regard to non-deposit of the amount equivalent to 50 per cent of the existing market value for the purposes of effecting transfer, this Court finds from a bare perusal of the lease deed dated 15.11.1942 that no such pre-condition has been mentioned therein and moreover, since the lease in question is a perpetual lease with full rights to the lessee to transfer from generation to generation, the said ground taken in the impugned order dated 28.02.2004 to reject the case of the case of the petitioner is also, in view of this Court, nonest and contrary to law.

13. The last ground i.e. the third ground, which has formed basis to non-suit the petitioner, vide the impugned order dated 28.02.2004, is that the transfer/sale deed in question has been executed and registered at Bombay on 27.12.2001, which is not recognized by the Government of Bihar. In this regard, it would be relevant to reproduce Section 30(2) of the Indian Registration Act, as it then existed, prior to being omitted by



Central Act 48 of 2001; herein below:-

“30(2).The Registrar of a district including a presidency town may receive and register any document referred to in Section 28 with regard to the situation in any part of India of the property to which the document relates.”

It would also be relevant to reproduce herein below Section 28 of the Indian Registration Act, as amended by the Bihar Act 6 of 1991 with effect from 08.08.1991 herein below:-

“28. Place for registering documents relating to land.—Save as in this part otherwise provided every document mentioned in clauses (a), (b), (c), (d) and (e) of sub-section (1) and sub-section (2) of section 17 insofar as such documents affect immovable property and in clauses (a), (b), (c) and (cc) of section 18 shall be presented for registration in the office of the Sub-Registrar within whose sub-district or district the whole of the property to which such document relates is situated in the State of Bihar.”

14. In the aforesaid context, this Court deems it fit and proper to refer to the Government of Bihar notifications dated 18.07.2002 and 22.08.2002, whereby and whereunder provision has been made for deposit of differential amount of stamp duty with regard to those lands which have been registered outside the State of Bihar. The petitioner has brought on record proof of deposit of the differential amount of a sum of Rs. 1,82,500/-,



which has also been duly accepted and to the said effect certificate has been issued by the District Sub-Registrar, Patna vide certificate dated 29.10.2017.

15. With regard to the third ground, on which the petitioner has been non-suited vide the impugned order dated 28.02.2004, this Court finds that though on the date of registration of the sale deed in favour of the petitioner i.e. on 27.12.2001, Section 30(2) of the Indian Registration Act had been omitted by the Central Amendment Act, published in the gazette on 24.09.2001, however, the office of the Inspector General of Registration and Controller of Stamps, Maharashtra State, Pune vide letter dated 04.04.2002, in reference to the validity of sale deed in question, executed on 27.12.2001 at Mumbai, has clarified that it has issued an Order, whereby the Government of Maharashtra has given effect to "The registration and other related laws (Amendment) Act, 2001", published by the Central Government vide Bill No. 48/2001 dated 24.9.2001, with effect from 01.01.2002, hence Section 30(2) of the Indian Registration Act was valid till 31.12.2001 in the presidency town of Mumbai. In such view of the matter, this Court finds that the registration of the sale deed in question at Bombay on 27.12.2001 i.e. prior to 01.01.2002, which is the cut off date, is legal and valid. As



far as amendment of Section 28 of the Indian Registration Act by the Bihar Act 6 of 1991, with effect from 08.08.1991, is concerned, the same provides for registration of documents relating to immovable property by presentation of the same for registration in the office of the Sub-Registrar within whose sub-district or district, the whole of the property is situated to which such documents relates as far as the State of Bihar is concerned, nonetheless, this Court finds that the same is contrary to the original Section 28 of the Indian Registration Act, 1908, which starts with a non-obstante clause i.e. “save as in this part otherwise provided”, meaning thereby that the same is subject to the provisions contained in Section 30(1) of the Indian Registration Act which provides that- "Any Registrar may in his discretion receive and register any document which might be registered by any Sub-Registrar subordinate to him", thus the expression “Any Registrar” would mean all the Registrars and, moreover, at that point of time i.e. on 27.12.2001, on which date the sale deed was registered, as mentioned herein above, Section 30(2) was also in force, which empowers any Registrar of a district including a presidency town to receive and register any document referred in Section 28 without regard to the situation in any part of India of the property to which the document



relates. The aforesaid amendment in Section 28 of the Indian Registration Act by the Bihar Act 6 of 1991, to the extent is inconsistent with the law made by the Parliament, is repugnant, in terms of Article 254 of the Constitution of India, thus this Court finds that there is no infirmity as far as execution of the sale deed dated 27.12.2001 is concerned, hence the same is held to be legal and valid. Consequently, the grounds taken by the learned Collector, Patna in the impugned order dated 28.02.2004, to non-suit the petitioner is held to be unfounded and illegal.

16. As far as the contention of the learned counsel for the State of Bihar is concerned, the same has already been dealt with herein above and merits no consideration. Similarly, the arguments advanced by the learned counsel for the respondent no. 3 are also unfounded, for the reasons mentioned herein above and this Court further finds that it is wrong on the part of the respondent no. 3 to contend that the deed in question dated 27.12.2001 is a registered deed of agreement and not a sale deed inasmuch as a bare perusal of the said deed dated 27.12.2001 would show that the same is a deed of sale and has been registered at Mumbai. As far as the decision cited by the respondent no. 3, rendered in the case of **Abhay Shankar Sinha** (supra) is concerned, the same is also absolutely distinguishable in the



facts and circumstances of the present case inasmuch as in the said case it has been held that the petitioner had acquired interest in the land without any authority of law or permission of the competent authority of the State Government whereas in the present case this Court has already held herein above that as per the terms of the original lease deed dated 15.11.1942, no permission of the competent authority of the State Government was/is required for transfer. This Court also finds that the present case is squarely covered by the law laid down by the Hon'ble Delhi High Court in the Judgment rendered in the case of *Gati Cargo Management Services* (supra).

17. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, this Court finds that the impugned order dated 28.02.2004, passed by the Collector, Patna is based on such grounds which are unsustainable in the eyes of law, hence the same is quashed, however, liberty is granted to the learned Collector, Patna to proceed further, in accordance with law, if the law so permits.

18. As far as the impugned order dated 02.08.2004, passed by the learned Collector, Patna, is concerned, which has been challenged in the second case, this Court finds that the same has got no legs to stand in view of quashing of the aforesaid order



dated 28.02.2004, passed by the learned Collector, Patna, nonetheless, this Court also finds that by a judgment dated 24.03.2021 passed in CWJC No. 9720 of 2001 (***Uday Sinha and others vs. The State of Bihar & others***) and analogous cases, this Court has quashed same and similar orders passed by the Collector, Patna, as the one dated 02.08.2004, by holding the same to be contrary to the law laid down by this Court as also by the Hon'ble Apex Court. It would be apt to reproduce paragraph nos. 2 to 10 of the aforesaid Judgment rendered in the case of ***Uday Sinha and others*** (Supra) herein below:-

“2. The petitioners of the aforesaid writ petitions have challenged the action of the Collector, Patna, who has issued the impugned letters, whereby and whereunder the lease deeds of the petitioners have been cancelled and it has been directed to resume possession of the land in question along with the structure present over the same.

3. The learned counsel for the petitioners have not only challenged the mode and manner in which the lease of the petitioners have been cancelled but have also submitted that any resumption of the lease hold property can only be through the due process of law i.e. by approaching the Civil Court of competent jurisdiction and even if the period of lease has expired or the lease stands cancelled, yet the status of the lease holder would be juridical in nature. It is also submitted that the leases in question being perpetual leases



cannot be subject to any interference by the respondent-State. It is further submitted that the leases in question have created a vested legal right in the lease holders to the exclusion of others and the contractual obligations casted on the parties to the lease would bind the parties until the lease is determined by a competent forum. It has also been canvassed that the impugned letters issued by the Collector, Patna cancelling the lease deeds in question as also directing for resumption of possession is bad in law inasmuch as no opportunity has been granted to the leases to rectify the breach, if any, hence on this ground also, the impugned action of the Collector, Patna is bad in law and is fit to be set aside. Some of the learned counsels for the petitioners have also argued that in some cases no notices have been issued by the respondent authorities before cancelling the lease deed, hence the letter issued by the Collector, Patna stands vitiated on the ground of non-compliance of the principles of natural justice. Lastly, the learned counsel for the petitioners have relied on a judgment rendered by this Court, reported in 2021(1) BLJ 5 (Shri Sanjay Singh vs. Patna Municipal Corporation), paragraphs no. 73 to 80 whereof are reproduced 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 by 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 AIR1968 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. vs. 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. vs. 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 extra judicially 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 & 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 & 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 herein above, 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 herein above by this Court & contrary to the due process of law as also antithetical to the Law laid down by the Hon'ble Apex Court, hence, the order dt. 16.7.2014 passed in Vigilance Case No. 118A/ 2013,



the order dt. 1.8.2014 passed in Vigilance Case No. 99A/2013 & the order dt. 28.11.2014 passed in Vigilance Case No. 97A/2013, by 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.”

4. The learned counsel for the parties have also relied on a judgment rendered by a coordinate Bench of this Court, reported in 2016(1) PLJR 277 (Khas Mahal Citizen Welfare Societyvs. The State of Bihar & Ors.), relevant paragraphs whereof is being reproduced herein below:-

“In my considered opinion, whereas the perpetual lease cannot be subjected to any interference by the State under the ‘2011 Policy’ even the periodical lease in its renewal clause has the attributes of a lease in perpetuity for it provides for a periodical renewal subject only to enhancement of rent which cannot be more than twice the previous rent. Thus except that such renewal is conditional on enhancement of rent which again cannot be more than twice the previous rent, there is no other option available to the lessor for refusal to grant renewal. In these circumstances, the State Government as a lessor cannot take recourse to a policy decision to override the right of renewal vested in a lessee by alteration of such a term which action besides being onerous and prejudicial to the lessee, is also loaded



heavily in favour of the lessor.

A complaint has been made on behalf of such of the lease holders through the petitioner regarding non acceptance of the renewal fee by the State with an intent and purpose of rendering them a defaulter to the covenants present and thus preparing a ground for his ouster. In my opinion, this would be a rather arbitrary action on the part of the State Government as a lessor in not accepting the annual rentals and/or the renewal fee with an intent to render the lessees 'defaulters' under the 'Khas Mahal Manual' and 'trespassers' under the '2011 Policy'. The State is under a duty to act fairly in contractual sphere and cannot be permitted to indulge in such theatrics with intent to defeat the rightful claim of the lessees.

*The judgments rendered in the case of Jaleshwar Mistry and Gait Public Library(supra) are few of the judgments on the issue that any resumption on the lease hold property could only be through the process of Civil Court and even if the period of lease has expired, yet the status of the lease holder would be juridical in nature. The issue that a lessee of an expired lease cannot be termed a 'trespasser' over the lease hold property was considered and upheld by this Court in a Bench decision reported in **1996(2) PLJR 621(M/s. Hindustan Petroleum Corporation Ltd. Vs. State of Bihar)**. The Bench while being critical of a similar stand taken by the State has held in paragraph-29 that a lease holder of an expired registered lease cannot be called either a*



'trespasser' or an 'encroacher' and in paragraph-31 has held that a lease in between the 'State' and an individual is not a mere contract but constitutes a transfer of interest in land and creates a right in rem.

I have already discussed some of the covenants of the lease present at Annexure-2 series & certainly it is not in the nature of simple contract rather it is in the nature of transfer of interest in land & creates a vested legal right in the lease holder to the exclusion of others. The contractual obligations cast on the parties to the lease exercised under the 'Khas Mahal Manual' would bind the parties until the lease is determined by a competent forum. The State as a lessor in such circumstances can neither refuse acceptance of rentals nor can refuse a renewal.

In my considered opinion in the circumstances discussed herein above and taking into consideration the covenants present in the existing lease executed in between the State & the lessees under the 'Khas Mahal Manual', any attempt by the State to impose the conditions present in the '2011 Policy' would be an act of arbitrariness, in teeth of the judicial precedent & a blot on the State's action in the contractual sphere.

For the reasons aforementioned, this Court even while reserving its opinion as regarding the merits of the '2011 Policy' does deem it fit and proper to hold that the '2011 Policy' cannot be made applicable to the pre existing lease(s) entered in between the State as a lessor and the individual / juristic person on the other hand as a lessee



and the right of the parties under such lease(s) would continue to be governed by the provisions of the 'Khas Mahal Manual' & the covenants present in the lease(s).

The writ petition is accordingly allowed."

5. The Ld. counsel for the parties have also submitted that the aforesaid judgment rendered in the case of Khas Mahal Citizen Welfare Society (supra) has also been upheld by the Division Bench by a judgment reported in 2017(3) PLJR 662 (State of Bihar vs. Khas Mahal Citizen Welfare Society), relevant paragraphs whereof are reproduced herein below:-

"2. Taking shelter of a policy which came into force in the year 2011, namely, the Bihar Khas Mahal Policy, 2011, action was proposed to be taken against the Society & the Society & its members (lessee) approached this Court in the writ petition and in the writ petition it was found that the policy of 2011 will have prospective effect, will not apply and cannot be made applicable to any act of the Society & its members prior to coming into force of the policy and further holding that if any act has been undertaken contrary to the lease deed prior to forming of the policy, the State had right to proceed in the matter of cancellation of the lease deed in terms of the lease deed and to get the lease deed cancelled in accordance with law or to take recourse to the remedy of filing a suit for getting the transaction declared as null and void i.e. which took place prior to coming into force of the policy in question. Prima facie holding that the policy in question which came in the year 2011 cannot



be used against the acts of the Society and its members which took place prior to coming into force of the policy, the writ petition has been allowed and liberty has been granted to the State Govt. to proceed in accordance with law for violation of the lease deed granted. In fact by the policy in question the State Government is trying to change the conditions of the lease, which according to learned Writ Court was not permissible.”

6. 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 Apex Court, reported in 2019(1) PLJR 628 (SC).

*7. It is thus the submissions of the Ld. counsel for the parties that merely by an administrative/executive order, the lease deeds in question can neither be cancelled nor possession of the land/plot/structure in question can be resumed unilaterally & the respondents are required to take recourse to the due process of law i.e. by invoking the jurisdiction of the competent civil Court by filing appropriate suit and not otherwise. Therefore, it has been contended by the learned counsel for the petitioners that merely by an executive order, the District Magistrate, Patna has cancelled the lease deeds in question and directed for resumption of the possession of the land/plot/ structure in question, which is contrary to the law laid down by the Hon’ble Apex Court in the case of **Express Newspaper Private Limited vs. Union of India**, reported in AIR1986 SC 872 as also contrary to the law laid down by this Court in a judgment reported in 1995(1) PLJR*



585(Gait Public Library & Institute vs. State of Bihar).

8. The learned counsels appearing for the respondent-State have not disputed the position as is existing in law and have submitted that the present batch of writ petitions are squarely covered by the judgments rendered by this Court in the case of Shri Sanjay Singh (supra) as also in the case of Khas Mahal Citizen Welfare Society (supra).

9. Having regard to the facts and circumstances of the case as also considering the submissions made by the learned counsel for the parties, the aforesaid batch of writ petitions are being disposed off with the consent of the parties in view of the law laid down by this Court in the case of Sanjay Singh (supra) as also in the case of Khas Mahal Citizen Welfare Society (supra).

10. Accordingly, the impugned letters/orders issued/ passed by the Collector, Patna in all the aforesaid writ petitions, whereby and whereunder the lease deeds in question have been cancelled and a direction has been issued for resumption of the possession of the land/plot/structure in question, being contrary to the law laid down by this Court as also by the Hon'ble Apex Court, is held to be unsustainable in the eyes of law, hence are quashed."

19. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove as also considering the law laid down by this Court in the case of Uday Sinha &



others (supra), this Court finds that the impugned order dated 02.08.2004, passed by the learned Collector, Patna is sustainable in the eyes of law, hence is also quashed.

20. The writ petitions stand allowed on the aforesaid terms.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	AFR
CAV DATE	21.09.2021
Uploading Date	19.09.2022
Transmission Date	

