

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2503 of 2018

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Anima Banerjee wife of Late Dr. Prasun Kumar Banerjee Resident of West Gandhi Maidan At T.N. Banerjee Road, P.S. Gandhi Maidan, District - Patna at presently residing at 2/4 Shantiniketan, New Delhi.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Executive Engineer, Patna Division, Vidyapati Marg, Near Fire Brigade Officer, P.S. Kotwali, Di

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Sajal Kumar Sinha
For the Respondent/s : Mr.Amit Prakash- Ga13

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT

Date : 20-09-2023

During the pendency of this case, the sole petitioner died. Therefore, I.A. No. 01 of 2022 was filed for substituting the legal heirs of the petitioner, which was allowed vide order dated 07.11.2022 and accordingly, the legal heirs and representatives of the petitioner have been added as petitioners namely Archana Mukherjee, Chandana Chatterjee, Ranjana Chakrabarty, Malvika Ganguli and Olly Gandhopadhyay all daughter of late Dr. Prasun Kumar Banerjee are added in this writ petition.

2. This writ petition has been filed for quashing the letter vide Memo No. 3492 dated 23.07.2015 and subsequent letter vide Memo No. 8092 dated 23.12.2017 issued by the Executive Engineer, Patna Division, Patna by which the registered deed of lease for 04 kattha and 07 dhur of land which is adjacent to the building of the petitioner situated at T.N.



Banerjee Road, Patna was cancelled.

3. The short facts of this case are that in the year 1956 the father of the original petitioner late Dr. T.N. Banerjee was granted the land in question by way of lease for 30 years and after his death the husband of the original petitioner had renewed the said lease for the next 30 years by the permission of the Government of Bihar. Pursuant to the said permission, the State Authorities executed registered deed of lease on 25th of July, 1987 in favour of the husband of the original petitioner. After the lease was registered, the State Authorities issued a letter with regard to deposit of lease amount and the same has been deposited by the husband of the original petitioner on 12.01.1994. Thereafter the State Authorities issued a letter dated 31.07.1999 demanding lease amount of Rs. 552/- up to the year 1998-1999 and the same was also paid. In the year 2009, the husband of the original petitioner died due to illness. On 05.10.2009, the State Authorities has issued letter No. 3320 demanding the lease amount of Rs. 1325/- and the original petitioner deposited the same. Again on 21.12.2010, the original petitioner deposited the lease amount till 2011.

4. Thereafter, a letter dated 17.01.2013 was issued by the State Authorities regarding the area of land for which



lease was granted and pursuant to that the original petitioner has sent a letter dated 28.01.2013 to the State Authorities stating therein the entire facts regarding the query of the State Authorities.

5. As per the terms and conditions of the renewal deed the original petitioner filed an application before the State Authorities for mutating her name in place of her late husband but her name was not mutated and all of sudden the original petitioner received a letter dated 23.07.2015 issued by the Respondent No. 02 by which the lease has been cancelled and she was directed to vacate the said land within fifteen days. Thereafter the original petitioner filed a representation for recall of the cancellation order before the State Authorities but instead of recalling the cancellation order, the State Authorities forcibly took possession and constructed a boundary wall over the said land.

6. Learned counsel for the original petitioner submits that the State Authorities have illegally cancelled the lease deed without following the terms and conditions as mentioned in the lease deed. He also submits that after the death of the husband of the original petitioner, an application was filed by her for mutation of her name in place of her late



husband in the lease deed but the State Authorities without any communication or notice have cancelled the lease which is in complete violation of principles of natural justice.

7. Learned counsel for the original petitioner further submits that the non-renewal of lease of the land in favour of the husband of the original petitioner cannot be cancelled without issuing any show-cause notice to the original petitioner as she was a legally wedded wife of Dr. P.K. Banerjee.

8. By making the aforesaid submissions, learned counsel for the original petitioner submits that the action of the State Authorities is completely illegal and the impugned letters issued by the State Authorities may be quashed.

9. A Counter Affidavit has been filed on behalf of the State and in the counter affidavit it has been stated that the original petitioner did not inform the State Authorities about the death of her husband within a specified time and thereafter she did not provide the appropriate succession certificate about legal heirs of her late husband and because of the same no notice was issued to the original petitioner and impugned order dated 23.07.2015 was passed.

10. I have considered the submission of learned



counsels for the parties and perused the materials on record.

Clause 2 and 10 of the renewed lease deed dated 25.07.1987

reads as follows:-

2. *"Except with the previous sanction of Government in Building and Housing Construction Department (B or H.D.C.) in writing and on payment of a fee equal to 25 percent of the yearly rental (provided that no such fee shall be less than Rupees 1 or more than Rupees 100/- the Lessee shall not transfer assign sublet or part with the possession of the said demised land and premises or any part thereof.*

***Note-** In the case of succession by inheritance no fee as aforesaid shall be payable, the person succeeding shall apply forthwith to the Executive Engineer for mutation of names and such application shall bear the Court fee stamp prescribed by law."*

10. *"If three months prior to the expiration of the said term the Lessee shall notify the Executive Engineer that he is desirous of taking a new lease of the said premises and shall have duly observed and performed all the terms and conditions of this lease he shall on the expiry of the terms of this lease be entitled to an unlimited option of renewal of the lease of the said premises at an interval of every thirty years on the express condition that Government in the B and H.C.D. shall have the full right to increase the rate of rent not exceeding double*



the amount of the previous rent at every renewal but otherwise on the said terms and conditions and subject to the same, covenants and agreements including this covenant for renewal as are contained in this lease. In the event of the Lessee not taking a new lease as aforesaid on the expiry of the period of 30 years, the Lessee shall not be entitled to any compensation for any buildings, structures premises, nor shall be entitled to dismantle or remove any such building or structure and the Executive Engineer may re-enter on the said premises and take possession of the lands, buildings and structures which shall there upon vest absolutely in the Lessor. But if the Lessee wants the lease to be renewed it would be renewal provided of course he had fulfilled the terms and conditions of the lease and is prepared to pay if so desired by Government a higher rent within the limit specified above.

In case however Government want to resume the land under Clause VI of the lease, they would have to pay compensation to the Lessee as provided for under that Clause."

11. From reading of clause 10 of the renewed lease deed, it will appear that the lease was for unlimited period which was to be renewed after every 30 years. Though, under the lease deed, the original petitioner can be directed to remove the illegal construction and the lessor can, for any public



purpose resume the possession of the land in question but in the present case the lease has been cancelled for non-furnishing the related documents to the authority.

12. In an identical situation, this Court in the case of ***Shri Sanjay Singh Vs. Patna Municipal Corporation*** reported in **2021 (1) BLJ 5 :2021 1 PLJR 209** has held in Paragraph Nos. 73, 74, 75 and 76 as under:-

"73. The aforesaid provisions of the Transfer of Property Act, 1882 would show that determination of a the 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 AIR 1968 SC 620 (Lallu Yeshwant Singh v. Rao Jagdish Singh)."

13. Further this Court in the case of ***Uday Sinha and Others Vs. The State of Bihar and Others*** reported in **2021 (2) PLJR 702** has held in paragraph nos. 78, 79 and 80 as



under:-

"78. Thus the contention of the Ld. Counsel for the respondents to the effect that since the petitioners have violated the terms and conditions of the lease deed in question inasmuch as not only a portion of the lease land has been transferred but the petitioners have also engaged in making construction for commercial purposes. hence, the lease in question has been rightly cancelled and the possession of land/under construction building has been validly resumed by the Municipal Commissioner, Patna Municipal Corporation, is misconceived and fit to be rejected, moreso in view of the Law laid down by the Hon'ble Apex Court in the cases of Express Newspapers (P) Ltd. (supra), Lallu Yeshwant Singh (supra), Krishna Ram Mahale (dead) by his L.Rs. (supra) and State of U.P. and Ors. v. Maharaja Dharmander Prasad Singh (supra)."

14. In the present case, it is also an admitted position that the impugned letters cancelling the lease deed of the original petitioner has been passed without initiating any proceeding for cancellation of lease deed, without issuing any notice to the original petitioner and without hearing the original petitioner. The stand of the respondents that the details of the death of the husband of the original petitioner was provided to the State Authorities after a delay will not result in the



cancellation of the lease because the information was provided during the subsistence of the terms of the lease with a request to extend the lease in favour of the original petitioner, who was the wife of late Dr. P.K. Banerjee. The cancellation of lease on the ground that the details of legal heirs of the deceased were not provided by the original writ petitioner is illegal as a lease cannot be terminated on such ground. After the death of her husband and during subsistence of the lease period, the respondents have been informed that the original lease holder has died and the details of legal heirs were also provided to the respondents. Moreover, no term of lease deed has been violated by the legal heirs of the original lease holder and if the respondents consider that the details of the legal heirs was provided after a delay, the same cannot be a ground for cancellation of the lease deed as there is no violation of the terms of the lease deed. Further, from perusal of clause 10 of the renewed lease deed, it appears that the lease was for unlimited period which was to be renewed after every 30 years. In the opinion of this Court, a lease can only be cancelled if there is any violation of terms of the lease. When the lease in effect a perpetual lease, the petitioners cannot be forcibly evicted or the possession of the lease cannot be taken without an order passed



by a competent Civil Court.

15. In view of the above discussions, this application is allowed. Accordingly, the impugned letters dated 23.07.2015 and 23.12.2017 passed by the respondent no.2 are held to be illegal and the same are hereby quashed.

16. The Executive Engineer, Patna Division, Patna or the Authorized Officer is directed to renew the lease as per the terms of the lease deed as no violation of the terms of the lease has been alleged by the Authorities and as per Clause 10 of the renewed lease deed, the lease deed has to be renewed at the revised rate of rent to be paid by the lessor. The lessor will include the legal heirs of the deceased who have now been substituted in this writ application. The aforesaid exercise of renewal of lease must be completed by the respondent authorities within a period of three months from the date of receipt/communication of a copy of this order.

(Sandeep Kumar, J)

Vikas/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A
Uploading Date	22.09.2023
Transmission Date	N.A.

