

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9381 of 2016

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1. Zahra Ahmad and Ors W/o of Late S. Shaukat Imam
 2. Syed Khalid Imam S/o Late Shaukat Imam
 3. Syed Umar Farooq Imam S/o Late Shaukat Imam
 4. Syed Zahida Imam D/o Late Shaukat Imam
 5. Syed Abida Imam W/o Aftab Ahmed ,D/o Late Shaukat Imam All Residents of sadar Gali, P.S. kajekala. P.O. jhauganj, Patna City, District-Patna -800008.
 6. Zahra Ahmad Wife of Late S. Shaukat Imam
 7. Zahra Ahmad wife of Late S. Shaukat Imam
 8. Syed Khalid Imam S/o Late S. Shaukat Imam
 9. Syed Umar Farooq Imam S/o Late S.Shaukat Imam
 10. Syed Zahida Imam D/o Late S. Shaukat Imam
 11. Syed Abida Imam W/o Aftab Ahmed,D/o Late S.Shaukat Imam All Residents of Sadar Gali, P.S. Kajekala. P.O. jhauganj, patna City District-Patna-800008

... .. Petitioner/s

Versus

1. The Patna Municipal Corporation and Ors
2. The Patna Municipal Corporation through Commissioner,Patna Municipal Corporation,patna.
3. The Executive Officer, New Capital Circle North, patna Municipal Corporation, patna
4. the Estate Officer, patna Municipal Corporation, patna

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Gautam Kumar Kejriwal, Advocate
For the Respondent/s : Mr. Prasoon Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

4 28-03-2023 Heard learned counsel for the petitioner, learned counsel for the Patna Municipal Corporation Mr. Prasoon Sinha.

The writ application questions the order dated 10.08.2015 passed by the respondent No. 2 whereby the



application dated 19.05.2012 filed the by petitioner seeking mutation of their name over plot No. A/224 situated at SK Puri has been rejected, further seeks a direction upon the respondent No. 2 to mutate the name of the petitioners over the land in question, the learned counsel for the petitioners submits that relevant facts in brief is being stated which have relevance for adjudication of the present case. It is next submitted that one Zafar Imam was allotted plot No. A/224 at S.K. Puri by the then Patna Improvement Trust *vide* letter dated 17.10.1966. The said plot had an area of 3 Katha 1017 Sq. ft. initially, which was later revised and the new area of plot was declared to be 5.221 Katha by PRDA, which succeeded Patna Improvement Trust.

It is next submitted that Zafar Imam had a son Saukat Imam, the petitioner No. 2 and 3 are sons of Saukat Imam, petitioner No. 4 and 5 are daughters of Saukat Imam and petitioner No. 1 is wife of Saukat Imam. It is next submitted that Saukat Imam died on 14.12.2011. Learned counsel next submits that Zafar Imam made payments to Patna Improvement Trust of all the consideration demanded. Zafar Imam, thereafter, died on 29.04.1979.



After the death of Zafar Imam, his son Saukat Imam got the land mutated in his name on 07.05.1987 by the PRDA, but the lease deed was not executed in his favour, despite all formalities being completed, nor the possession of the land was handed over. Further, by letter dated 08.04.2000, the PRDA raised a demand of Rs. 16,22,111.30/- from Shaukat Imam with proposed cancellation of allotment on account of non-compliance.

It is submitted that, accordingly, Shaukat Imam filed CWJC No. 5319 of 2000, challenging the demand as raised by letter dated 08.04.2000. The CWJC No. 5319 of 2000 was allowed by order dated 01.02.2007 with a direction to the authorities to execute the sale deed and to hand over possession of the plot in question within a period of three months (Annexure 1 to the writ petition). The order dated 01.02.2007 in CWJC No. 5319 of 2000 was complied partially and the lease deed was executed in favour of Shaukat Imam on 18.12.2008 (Annexure 2 to the writ petition), but the possession of the plot was not handed over in light of order dated 01.02.2007 in CWJC No. 5319 of 2000. It is submitted that in light of order dated 01.02.2007,



the possession of the plot had to be handed over by 01.05.2007, but the same was not done as the plot was encroached by the encroachers.

It is next submitted that despite orders of this Court dated 01.02.2007, the possession could not be handed over to Shaukat Imam, as Corporation was not able to remove the encroachment on the land in question, thereafter, Shaukat Imam died on 14.12.2011. It is next submitted that on account of death of Shaukat Imam, the entire family was grief stricken but on 19.05.2012, the petitioner No. 1 (wife of Shaukat Imam) filed an application seeking mutation of the name of the petitioners over the land in question in place of Shaukat Imam (Annexure 3 to the writ application).

Learned counsel for the petitioner submits that while the mutation application was pending, the petitioner *vide* her letter dated 21.05.2013 and 28.06.2013 represented before the Corporation for removing the encroachment and hand over the possession of the plot in question. It is next submitted that despite land being allotted in the year 1966, neither Zafar Imam nor Shaukat Imam nor the petitioner



were given possession of the land despite all payments being made, thus the petitioner No. 1 filed MJC No. 473 of 2014 seeking initiation of contempt proceeding against the authority alleging violation of order dated 01.02.2007 in CWJC No. 5319 of 2007, the respondent's corporation undertook to deliver possession of the land in question to petitioner No. 1 within six weeks, in the contempt proceeding as recorded in the order dated 13.08.2014 in MJC No. 473 of 2014.

Learned counsel next submits that the Corporation after giving undertaking before this Court as recorded in the order dated 13.08.2014 in MJC No. 473 of 2014, issued show-cause dated 29.09.2014 (Annexure 5 to the writ application) upon the petitioner to explain as to how an agreement in favour of M/s Sinha Property Developers Pvt. Ltd., was executed on 07.08.2013 in breach of Clause 11 of the lease deed executed by the Corporation, the show-cause further incorporated that in the event, if the reply is not filed within time, the lease deed would be canceled and mutation application would be rejected. The petitioners submitted their reply to the notice dated 29.09.2014. The respondent



Corporation did not pass any order on the reply submitted by the petitioners to the show cause dated 29.09.2014, but succeeded in removing the encroachment from the land on 26.05.2015, but the possession was not handed over to the petitioner.

Learned counsel next submits that after removing encroachment from the land on 26.05.2015, the respondent No. 1 without giving any opportunity of hearing to the petitioners rejected the petition for mutation of the petitioners by orders dated 10.08.2015 (Annexure 6) i.e., the order impugned in the present writ application.

It is next submitted that the order dated 10.08.2015 was brought on record in MJC No. 473 of 2015, thereafter, physical possession of the land was handed over to the petitioner on 26.09.2015 (Annexure 8 to the writ petition) by the Corporation. The learned counsel next submits that it absolutely does not stand to reason, that when Corporation rejected the application for mutation by order dated 10.08.2015, then where was the occasion for handing over possession of the land in question on 26.09.2015, it is further submitted that petitioners were not



given any opportunity of hearing, as specifically pleaded in paragraph 24 of the writ petition, before passing the order dated 10.08.2015 which entail civil consequences.

The learned counsel next submits at this stage that even the Corporation in its counter affidavit has not rebutted the pleadings specifically made in paragraph 24 of the writ application.

Learned counsel next submits that even otherwise the order dated 10.08.2015, passed by respondent no. 1 is bad, for the reason that application for mutation was rejected alleging breach of Clause 11 to lease document, as petitioners were alleged to have entered into an agreement with a developer. It is next submitted that Clause 11 of the lease document (Annexure 2 to the writ application) incorporates that lessee shall have no right to transfer by way of sale/exchange otherwise the plot under lease or any structure constructed thereon to any other person within 10 years of the date of this indenture without the previous consent of the lessee, but no such consent shall be required in matters of gift or will in favour of legal heir, further in case of subsequent transfer of the plot and structure raised



for value, the lessor shall have first option to purchase the same for value determined and on terms and conditions decided and resolved by the lessor.

The learned counsel thus submits that Clause 11 of the lease document is clear in its incorporation. It is submitted that what it prohibits is transfer of the land in question without seeking previous consent of the lessor within 10 years of the execution of the indenture. It is submitted that this submission is made as it has relevance for adjudication of the case.

The learned counsel submits that the order dated 10.08.2015 passed by the respondent no. 1 cannot be countenanced, it is not disputed rather admitted that the lease in question was executed in 2008, though the plot in question was allotted in the year 1966, further the execution of the lease was done only after the intervention of this Court, which amply demonstrates that the authorities right from the beginning were making endeavors to frustrate the allotment.

It is next submitted that Clause 11 of the lease incorporates that the lessee shall have no right to transfer by



way of sell, exchange or otherwise the plot under lease without the consent of the lessor within 10 years of the execution of the indenture. It is next submitted that transfer by way of sale, exchange or otherwise as incorporated in Clause 11 of the lease would require concluded transfer by way of sale, exchange or otherwise, but definitely it would not include within its ambit an agreement for development which was never acted upon, in this case the development agreement entered in between the petitioner and the developer, remained in realm of an agreement, as the agreement ended in nullity in so far as the implementation is concerned, as specifically pleaded in paragraph 34 of the writ petition which also does not stand rebutted by the Corporation in its counter affidavit. It is thus submitted that development agreement dated 07.08.2013 was never acted upon.

It is next submitted that Clause 14 of the lease deed and Rule 22 of the PRDA Land Disposal Rule, 1978, referred in the show cause dated 29.09.2014 and the order impugned order dated 10.08.2015, incorporates cancellation of lease deed in case of violation of the relevant condition



of deed and rules, but by order dated 10.08.2015 lease deed has not been canceled, but only the mutation application has been rejected which *prima facie* demonstrates that even the authorities were aware that the terms of the lease as contained in Clause 11 was not breached as the agreement with the developer was not given effect to and remained in realm of an agreement.

The learned counsel for the petitioner then places reliance on a judgment of the Hon'ble Supreme Court to contend that the Hon'ble Supreme Court in case of ***Raghuram Rao vs Eric P. Mathias reported in 2002 (II) (SCC 624)***, has categorically held that the lease being the document prepared by the lessor, its terms have to be construed against the lessor and where the terms of the lease does not expressly restrict part transfer of the plot, but restrict transfer of entire plot, the transfer of part of the demised plot is not a violation of the expressed terms of the lease. It is thus submitted that the law is clear and this perhaps explains, as to why, lease of the plot in question has not been canceled till date but the learned counsel at the cost of repetition submits that the agreement entered with



the developer was never acted upon, as such, question of contravening the expressed provision of the lease simply does not arise.

The learned counsel next submits that the mutation does not give rise to title, rather signifies possession, hence it absolutely defies all logic, wisdom and reasonable administrative behavior, that as to why possession of the land was handed over to the petitioner on 26.09.2015 i.e., subsequent to the rejection of the mutation application on 10.08.2015, which further reinforces the contention of the petitioners, that authorities on one pretext or the other were trying to frustrate the legitimate claim of the petitioner over the land in question.

Learned counsel appearing for the Municipal Corporation very fairly submits that he is not opposing the submissions made by the learned counsel for the petitioners provided the petitioners even as of date, if are willing to give in writing to the Corporation that they will not act upon the development agreement entered with Sinha Property Developers Pvt. Ltd. Dated 07.08.2013 (Annexure 9).



Learned counsel for the petitioner, at this stage, submits that he had made specific pleadings in the writ application as recorded hereinabove that the agreement entered in between the petitioners and the aforesaid developers remained in realm of agreement only and it was never acted upon nor it will ever be acted upon. It is next submitted but then it will not preclude the petitioner from acting in accordance with law in terms of the conditions of the lease agreement once this undertaking is submitted before the Corporation.

Learned counsel for the Municipality fairly submits that the counter affidavit does not rebut the fact as pleaded in the writ application that the order impugned was passed behind the back of the State. Since, the learned counsel for the Municipal Corporation has fairly submitted that lease deed till date has not been canceled and the mutation application was rejected only on the ground that the petitioner had breached Clause 11 of the lease document and if the petitioners will give in writing an undertaking before the Corporation that development agreement as aforesaid, will never be given effect to, nor the agreement



will be acted upon subsequently then the Corporation will have no objection in mutating the name of the petitioners over the land in question.

Considering the submissions made by the learned counsel for the Corporation the order impugned dated 10.08.2015 passed by respondent no. 2 is set aside and matter is remanded back to the Municipal Commissioner, Patna Municipal Corporation to decide the issue of mutation of the petitioner over the land in question afresh, keeping in mind the submission made before this Court by learned counsel appearing for the Corporation and the submissions of the learned counsel for the petitioners recorded hereinabove.

The learned counsel for the petitioner, at this stage, submits that the aforesaid undertaking shall be submitted before the Municipal Commissioner, Patna Municipal Corporation within four weeks from today.

(Satyavrat Verma, J)

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