

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.6778 of 2022**

---

1. Bajrang Lal Rungta S/o late Narmal Rungta, Shop No. 57, Bank Road, PS-Nagar, Muzaffarpur
2. Ravindra Singh S/o Late Vishwanath Prasad, Shop No. 55, Bank Road, PS-Nagar, Muzaffarpur.
3. Chameli Devi W/o-Late Vishwanath Prasad, Shop No. 38, Bank Road, PS-Nagar, Muzaffarpur.
4. Naval Kishore Sah S/o Late Ramautar Sah, Shop No. 30, Bank Road, PS-Nagar, Muzaffarpur.
5. Neelam Jaiswal W/o Kamal Kishor Prasad, Shop No. 41, Bank Road, PS-Nagar, Muzaffarpur.
6. Kamal Kishor Prasad S/o late Rameshwar Choudhary, Shop No.40, Bank Road, PS-Nagar, Muzaffarpur.
7. Kamal Kishore Dubey S/o Late Naval Kishor Dwivedi, Shop No. 53, Bank Road, PS-Nagar, Muzaffarpur.
8. Krishna Prasad S/o Late Sitaram Sah, Shop No.48, Bank Road, PS-Nagar, Muzaffarpur.
9. Geeta Devi W/o Ram Pravesh Sah, Shop No.20, Bank Road, PS-Nagar, Muzaffarpur.
10. Md. Faize Ahmed S/o Hazi Yusuf, Shop No. 10, Bank Road, PS-Nagar, Muzaffarpur.
11. Abhishek Jaiswal S/o-Late Vinod Kumar Jaiswal, Shop No. 12, Bank Road, PS-Nagar, Muzaffarpur.
12. Ram Sobhit Kamat S/o Late Chhedi Kamat, Shop No. 16, Bank Road, PS-Nagar, Muzaffarpur.
13. Lalit Kumar Dhanuka S/o Girdhari Lal Dhanuka, Shop No.17, Bank Road, PS-Nagar, Muzaffarpur.
14. Arun Kumar Choudhary S/o-Late Sukhdev Choudhary, Shop No. 9, Bank Road, PS-Nagar, Muzaffarpur.
15. Asma Khatoon W/o-Samsul Haque, Shop No. 11, Bank Road, PS-Nagar, Muzaffarpur.
16. Mishrilal Sah S/o Ramprit Sah, Shop No. 10, Bank Road, PS-Nagar, Muzaffarpur.
17. Neeraj Kumar S/o Late Shatrughn Prasad, Shop No. 46, Bank Road, PS-Nagar, Muzaffarpur.
18. Anand Mohan S/o-Satyadev Jha, Shop No. 63, Bank Road, PS-Nagar, Muzaffarpur.
19. Vijay Kumar Gupta S/o Late Vishwanath Prasad, Shop No. Bank Road, PS-Nagar, Muzaffarpur.
20. Manish Kumar S/O Late Nagendra Prasad, Shop No.44, Bank Road, P.S. Nagar, Muzaffarpur.



21. Rakesh Kumar S/o Late Kishori Mahto, Shop No. 56, Bank Road, PS-Nagar, Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
3. The Mayor, Municipal Corporation, Muzffarpur
4. The Deputy Mayor, Municipal Corporation, Muzaffarpur.
5. The Municipal Commissioner, Municipal Corporation, Muzaffarpur.
6. The Deputy Municipal Commissioner, Municipal Corporation, Muzaffarpur.
7. The In-Charge, Stall Branch, Room No.4, Municipal Corporation, Muzaffarpur.

... .. Respondent/s

=====

**Appearance :**

|                                            |   |                                |
|--------------------------------------------|---|--------------------------------|
| For the Petitioner/s                       | : | Mr. Nirbhay Prashant, Advocate |
| For the Respondent/s                       | : | Mr. Abbas Haider, (SC 6)       |
|                                            | : | Mr. Kashi Mohammad, AC to SC 6 |
| For the Municipal Corporation, Muzaffarpur | : | Mr. Awadhesh Kumar, Advocate   |

=====

**CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH**  
**ORAL ORDER**

3      08-01-2024                      Heard Mr. Nirbhay Prashant, learned counsel appearing on behalf of the petitioners; Mr. Abbas Haider (SC 6) along with Mr. Kashi Mohammad (AC to SC 6), learned counsels for the State and Mr. Awadhesh Kumar, learned counsel for the Municipal Corporation, Muzaffarpur.

2. The petitioners have filed the present writ petition for the following relief(s) :

“For quashing of Memo No. 2073 dated 24.11.2018 (Annexure-3), issued under the signature of the Municipal Commissioner, Municipal Corporation, Muzaffarpur (Respondent No. 5) whereby and whereunder rent of the shop has been



enhanced arbitrarily up to 200%, i.e., from Rs. 4/S.ft. to Rs. 8/S.ft. for *Kuchcha* shop and from Rs. 7/S.ft. to Rs. 14/S.ft. for *Pukka* shop, which is against the natural justice.

ii. And consequent upon the quashing of Annexure- 3, a direction may be given to the Respondent authorities to renew the lease agreement of the poor shopkeepers of Bank Road, Muzaffarpur on the terms of earlier lease agreement.

iii. Any other relief/s for which the petitioner is entitled for in the eye of law.”

3. The facts reveal that the petitioners have filed their individual application for renewal of their agreement of shops, pursuant to advertisement dated 12.12.2019. The terms of advertisement have not been challenged and in absence of that being challenged. The Hon’ble Patna High Court in the case of **Smt. Shamshad Khatun Vs. The State of Bihar & Ors.** reported in **(2010) 1 PLJR 929** in **Paragraph nos.14, 17 and 19** has held as follows : -

**14.** In *Jogindra Singh Sodhi v. Amar Kaur*, (2005) 1 SCC 31, a two-Judge Bench of the Apex Court was dealing with the stand taken as regards waiver on the part of the landlady by her own conduct. Their Lordships expressed the view that waiver is a question of fact which must be expressly pleaded, clearly proved and no such plea had been raised by the tenant or by the sub-tenant. Their Lordships further held a bald plea of waiver cannot defeat statutory provision made in larger interest. In that context their Lordships referred to the earlier decisions rendered in *Shalimar Tar Products Ltd. v. H.C. Sharma*, (1988) 1 SCC 70 and *Pulin Elehari Lal v. Mahadeb Dutta*, (1993) 1 SCC 629. In *Shalimar Tar Products Ltd.* (supra) the Apex Court has expressed the views as follows:—

“13. Everyone has a right to waive and to



agree to waive the advantage of a law made solely for the benefit and protection of the individual in his individual capacity. We are, however, in this case unable to agree. Firstly, in this case there was no case of waiver. Waiver is a question of fact which has to be tested by facts and evidence. There was no conscious relinquishment of the advantage of any statute. No court has gone into this fact. It does not seem to have been urged before the High Court also. Apart from this, in this requirement of the statute which is in the public interest there cannot be any question of waiver of a right, dealing with the rights of the tenants or the landlord.”.....

**17.** In this context we may profitably refer to *Krishna Bahadur v. Puma Theatre*, (2004) 8 SCC 229, wherein it has been held as follows:—

“9. The principle of waiver although is akin to the principle of estoppel; the difference between the two, however, is that whereas estoppel is not a cause of action; it is a rule of evidence; waiver is contractual and may constitute a cause of action; it is an agreement between the parties and a party fully knowing of its rights has agreed not to assert a right for a consideration.

10. A right can be waived by the party for whose benefit certain requirements or conditions had been provided for by a statute subject to the condition that no public interest is involved therein. Whenever waiver is pleaded it is for the party pleading the same to show that an agreement waiving the right in consideration of some compromise came into being. Statutory right, however, may also be waived by his conduct.”.....

**19.** In *Jaswantsingh Mathurasingh v. Ahmedabad Municipal Corporation*, 1992 Supp (1) SCC 5, a three Judge Bench of the Apex Court while dealing with the principle of the waiver has expressed



thus :—

“14. The principle of waiver connotes issuance of notice and non-response thereto. Everyone has a right to waive an advantage or protection which law seeks to give him/her. Undoubtedly, if a notice is issued and no representation was made by either the owner, tenant or a sub-tenant, it would amount to waive the opportunity and such person cannot be permitted to turn round, after the scheme reaches finality, to say that there is non-compliance of sub-rules (3) and (4) of Rule 21. It would amount to putting premium on dilatory and dishonest conduct.”

4. Considering the conduct of the petitioners and applying the above said principle of law, I am of the opinion that the petitioners themselves have chosen for renewal of agreement on the fresh terms and conditions. The petitioners have to pave the path of dismissal.

4. The writ petition also deserves to be dismissed on the ground of delay and laches.

5. There shall be no order as to costs.

**(Purnendu Singh, J)**

chn/-  
Ashishsingh/-

|   |  |  |  |
|---|--|--|--|
| U |  |  |  |
|---|--|--|--|

