

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11929 of 2016

- 1.1. Shri Robert Lakra Son of Lazanus Lakra, Resident of Flat No. 111, Grand Gulistan Apartment, Dakbanglow Road, Patna.
- 1.2. Shri Robinja Son Lakra Son of Shri Robert Lakra, Resident of Flat No. 111, Grand Gulistan Apartment, Dakbanglow Road, Patna.
- 1.3. Renu Mabel lakra Wife of Bikram Socky and Daughter of Shri Robert Lakra, Resident of Flat No. 111, Grand Gulistan Apartment, Dakbanglow Road, Patna.
- 1.4. Nourim Lakra D/o Shri Robert Lakra, Resident of Flat No. 111, Grand Gulistan Apartment, Dakbanglow Road, Patna.
2. Smt. Grace Dhanwar Wife of Late Eleazar Dhanwar resident of Flat No. 112, Grand Gulistan Apartment, Dakbanglow Road, Patna
3. Shri Jewel Soren Son of Late Mandal Soren resident of Flat No. 132, Grand Gulistan Apartment, Dakbanglow Road, Patna
4. Shri Tarkeshwar Prasad Son of Late Nandu Pandit resident of Flat No. 121, Grand Gulistan Apartment, Dakbanglow Road, Patna
5. Shri Binod Kumar Chaudhary Son of Late R.K.L. Chaudhary resident of Flat No. 122, Grand Gulistan Apartment, Dakbanglow Road, Patna
6. Shri Tarun Kumar Banarjee Son of Late Jogeshwar Banarjee resident of Flat No. 131, Grand Gulistan Apartment, Dakbanglow Road, Patna
7. Shri Hare Krishna Shrivastava Son of Late Surendra Prasad Shrivastava resident of Flat No. 222, Grand Gulistan Apartment, Dakbanglow Road, Patna
8. Shri Hare Krishna Singh Son of Late Janakdhari Singh resident of Flat No. 211, Grand Gulistan Apartment, Dakbanglow Road, Patna
9. Shri Srinath Prasad Son of Late Diranchi Lal resident of Flat No. 212, Grand Gulistan Apartment, Dakbanglow Road, Patna
10. Shri Mukul Shrivastava Son of Late Surendra Prasad Shrivastava resident of Flat No. 231, Grand Gulistan Apartment, Dakbanglow Road, Patna
11. Shri Murlidhar Srivastava Son of Late Surendra Prasad Shrivastava resident of Flat No. 232, Grand Gulistan Apartment, Dakbanglow Road, Patna
12. Shri Mahendra Narayan Lal Son of Late Deo Narayan Lal resident of Flat No. 242, Grand Gulistan Apartment, Dakbanglow Road, Patna
13. Shri Kishore Kumar Son of Late Purnendu Bhushan Ghose resident of Flat No. 241, Grand Gulistan Apartment, Dakbanglow Road, Patna
14. Shri Bharat Kumar Son of Late Sheetal Prasad resident of Flat No. 141, Grand Gulistan Apartment, Dakbanglow Road, Patna
15. Shri Shankranand Sharan Son of Late Sita Sharan Chaurasia resident of Flat No. 142, Grand Gulistan Apartment, Dakbanglow Road, Patna, Present resident of C/35, RBI officer's Quarters, North Avenue Road, Santacruz



West , Mumbai 400 054

16. Smt. Ela Singh Wife of Shri Pradeep Kumar Singh resident of Flat No. 221, Grand Gulistan Apartment, Dakbanglow Road, Patna, Present resident of Flat No. B6, Darbhanga House, Pedar Road, Mumbai
17. Smt. Kalawati Sharma Wife of Shri T.N. Sharma resident of Flat No. 351, Grand Gulistan Apartment, Dakbanglow Road, Patna
18. Smt. Sharda Nath Wife of Late Prem Nath resident of Flat No. 3251, Grand Gulistan Apartment, Dakbanglow Road, Patna
19. Smt. Uma Rani Jaiswal Wife of Sri Ramcharitra Jaiswal resident of Flat No. 341, Grand Gulistan Apartment, Dakbanglow Road, Patna
20. Smt. Jayshree Vinayak Bhojraj Wife of Late Binay Kumar resident of Flat No. 352, Grand Gulistan Apartment, Dakbanglow Road, Patna
21. Smt. Pramila Singh Wife of Late Harsa Chandra Singh resident of Flat No. 331, Grand Gulistan Apartment, Dakbanglow Road, Patna
22. Smt. Anju Kumari Wife of Shri Vinay Kumar resident of Flat No. 312, Grand Gulistan Apartment, Dakbanglow Road, Patna
23. Shri Vinay Kumar Son of Late Jagdambi Singh resident of Flat No. 322, Grand Gulistan Apartment, Dakbanglow Road, Patna
24. Smt. Sunaina Pandey Wife of Shri N.K. Pandey resident of Flat No. 332A, Grand Gulistan Apartment, Dakbanglow Road, Patna
25. Smt. Kusum Jain Wife of Shri S.K. Jain resident of Flat No. 332B, Grand Gulistan Apartment, Dakbanglow Road, Patna

... .. Petitioner/s

Versus

1. The State Of Bihar through Principal Secretary, Department of Revenue and Land Reforms, Government of Bihar, Patna.
2. The Principal Secretary, Department of Revenue and Land Reforms, Government of Bihar, Patna.
3. The Collector - Cum - District Magistrate, Patna.
4. The Additional Collector, Patna.
5. The Circle officer, Patna.
6. The Treasury Officer, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Chitranjan Sinha, Sr. Advocate
		Mr. Jitendra Kishore Verma, Advocate
For the Respondent/s	:	Mr. Subhash Pd.Singh, GA-03
		Mr. Ghanshayam Sharma, JC to GA-3



CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR SINHA
CAV JUDGMENT

Date : 15-07-2025

Heard the parties.

2. The petitioner in the present writ application seeks the following main relief:

“(i) To quash the order dated 18 May 2004, as contained in Letter No. 603(6)/Revision (Annexure 13), along with the subsequent Memo No. 2273/Rev., Patna dated 14 September 2004 (Annexure 13-1), on the grounds that there has been no breach of the terms of the lease deed dated 19 June 1966.

(ii) Consequent to the relief sought for in prayer (i), to direct the concerned authorities, including the District Collector, to consider the petitioners’ case—being the recognized successors-in-interest of the original lessee/society—for renewal of the lease in accordance with the rights conferred under Clause 15 of the original lease deed, and to grant such renewal strictly in accordance with law.



(iii) To grant any other relief or pass such further orders as may be deemed just, fit, and proper in the facts and circumstances of the petitioner's case."

3. The present writ petition has been instituted by a group of flat allottees and members of the Midway Apartment Co-operative Housing Society Limited, Patna, seeking to assail the legality and validity of the purported cancellation of a lease dated 19.06.1966 in respect of Khas Mahal land bearing Plot No. 4, Circle No. 6, Tauzi Nos. 862/863, Holding No. 56, measuring 0.234 acres, situated near Dakbungalow Road, Patna. The petitioners further seek issuance of appropriate directions for considering the petitioners' case for renewal of the lease and protection of their right to peaceful possession and enjoyment of their residential flats, constructed pursuant to express governmental permission.

4. The origin of the property in dispute traces back to a lease granted by the Collector, Patna, on behalf of the Government of Bihar in favour of one Ram Chandra Bhaduri on 01.04.1916, which was subsequently transferred with due approval to Smt. Taru Balla Devi in 1932. Following a family settlement in 1956, the southern portion of the land devolved upon Devi Rani Devi



and her successors, who were granted a renewed lease for 50 years w.e.f. 01.04.1966, which recognized the previous transfer and family settlement.

Subsequently, the then-lessees, citing financial necessity, sought permission from the competent authority to sell the property to Midway Apartment Co-operative Housing Society Limited for the purpose of constructing a multistoried residential apartment. Vide Memo No. 2489 dated 08.12.1989, the Revenue and Land Reforms Department, Government of Bihar, granted specific permission to transfer the land to Midway Apartment Co-operative Housing Society for constructing residential apartments thereon, visualizing provisions for sale of individual flats and execution of lease deeds with new allottees upon expiry of the existing lease.

5. Learned counsel for the petitioners submits that the impugned action/order of the respondent authorities contained in letter dated 18.05.2004 (Annexure-13) and consequential order/direction contained in letter dated 14.09.2004 (Annexure-13(i)) of cancelling the lease and resumption of the property in question along with the structures present over the same, is wholly arbitrary, unsustainable in law, and violative of the fundamental principles of natural justice. It is further contended that neither the



original lessees nor the petitioner-allottees, who are bona fide purchasers for value, were ever served with any notice or afforded an opportunity of hearing prior to the cancellation of the lease or the resumption of possession. The unilateral action taken by the respondents behind the back of the affected parties, despite their recognized possession and occupation spanning over two decades, is violative of Article 14, Article 21, and Article 300A of the Constitution of India.

6. It is further argued that the permission granted by the State Government on 08.12.1989, having never been rescinded, withdrawn, or annulled by any speaking order, continued to hold the field. Consequently, the execution of the sale deeds by the society in favour of the petitioners and the subsequent approval of building plans, mutation orders, tax assessments, and registration of individual sale deeds were all undertaken with the full knowledge and acquiescence of the government authorities, who are now estopped from asserting contrary claims.

7. Learned counsel also places reliance on the doctrines of promissory estoppel, legitimate expectation, and acquiescence, contending that the petitioners, having altered their position to their detriment by investing life savings and securing housing loans, cannot now be divested of their rights arbitrarily. It is



submitted that many of the petitioners are retired public servants and senior citizens who have been in uninterrupted peaceful possession of their respective residential flats since the mid-1990s and have been regularly paying municipal and other government taxes.

It is thus urged that the cancellation of the lease and the subsequent omission to consider the petitioners' claim for renewal of the lease, despite their long-standing occupation, is manifestly arbitrary, disproportionate, and unsustainable in the eyes of law. The impugned orders therefore deserve to be quashed, and directions may be issued for considering the petitioners claim for renewal of the lease in accordance with the law and for the protection of the petitioners' residential rights.

8. *Per Contra*; learned counsel for the respondent no.3 to 6 has opposed the writ petition and filed a counter affidavit stating that the petitioners have no legal right, title, or enforceable claim over the land in question, as they are neither lessees nor recognized allottees under any agreement with the State Government. It is submitted that the original lease, granted on 19.06.1966 for a term of 50 years in favour of Devi Rani Devi and others, contained explicit conditions prohibiting transfer or construction without prior written consent of the Collector. Though



permission was conditionally granted on 08.12.1989 for transfer and construction, the Chief Secretary, Government of Bihar, by letter dated 27.12.1989 directed that the said permission be kept in abeyance. Despite this, the original lessees executed two registered sale deeds in 1991 in favour of Midway Apartment Co-operative Housing Society without obtaining prior written approval, and a multistoried structure was constructed in violation of lease terms and government orders. Consequently, the Department of Revenue and Land Reforms, vide letter dated 18.05.2004 (Annexure-13), cancelled the lease and directed resumption of possession. This was followed by Memo dated 14.09.2004 (Annexure-13(i)) issued by the Collector to the Circle Officer for taking appropriate steps.

9. It is further stated by the counsel for the respondent no. 3 to 6 that when possession was not voluntarily handed over, the Collector, Patna, referred the matter for eviction proceedings under Para 14, Chapter 4 of the New Khas Mahal Policy, 2011 (Annexure-A to the Counter Affidavit of Respondent 3 to 6). The respondents contend that no privity of contract exists between the petitioners and the State, and thus, the doctrine of promissory estoppel or legitimate expectation is inapplicable.



The respondents assert that the action taken is legal, justified, and within the scope of their authority, and the writ petition is liable to be dismissed.

10. Before I get down to examining each of the grounds on which the learned counsel for the petitioner has questioned/challenged the impugned orders dated 18.05.2004 and 14.09.2004, I deem it appropriate to recall the Judgement dated 24.03.2021 rendered by this Court in the case of **Uday Sinha & Others vs State Of Bihar CWJC No. 9720 of 2001**, the relevant paragraphs of which are quoted herein below for needful;

“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 21.12.1994rendered 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 juridicial 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 them 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 and 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 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).

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 and contrary to the due process of law as also antithetical to the Law laid down by the Hon'ble Apex Court, hence, the order dated 16.07.2014 passed in Vigilance Case No. 118A of 2013, the order dated 01.08.2014 passed in Vigilance Case No. 99A of 2013 and the order dated 28.11.2014 passed in Vigilance Case No. 97A of 2013, by the 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 Society vs. 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 and certainly it is not in the nature of simple contract rather it is in the nature of transfer of interest in land and 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 and 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 and 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' can not 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' and the covenants present in the lease(s).

The writ petition is accordingly allowed."

5. The learned 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 learned 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 and the Society and 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 and 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 Government 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 learned 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 learned 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 and 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 ***AIR 1986 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."

KEY ISSUES FOR CONSIDERATION

(i) Whether the permission granted by the Government vide letter dated 08.12.1989 for sale and construction of multistoried apartments was ever lawfully withdrawn, revoked, or superseded by a valid order?

(ii) Whether the cancellation of the lease dated 19.06.1966 and the resumption of the possession of the land in question along with the structure present over the same, by the



State Government vide letter dated 18.05.2004 and the consequential letter dated 14.09.2004 issued by the Collector, Patna, was legally valid and sustainable?

(iii) Whether the said cancellation was in violation of the principles of natural justice, especially in the absence of notice or opportunity of hearing to the original lessees, the co-operative society, or the petitioners who are flat owners?

(iv) Whether the petitioners, being bona fide purchasers for consideration and in continuous possession for over two decades, are entitled to protection under the doctrines of promissory estoppel, legitimate expectation, and equity?

(v) Whether the petitioners have any enforceable legal right to seek renewal of the lease or claim title/interest in the demised property despite not being original lessees or direct parties to the lease agreement with the State?

(vi) Whether the Collector, Patna could have referred the matter for carrying out eviction proceedings under Para 14 Chapter 4 of the New Khas Mahal Policy 2011, in respect of the Khas Mahal property in question, which was initially given on lease on 01.04.1916 and subsequently renewed for 50 years w.e.f 01.04.1966?

FINDINGS



Issue No. 1: Whether the permission granted by the Government vide letter dated 08.12.1989 for sale and construction of multistoried apartments was ever lawfully withdrawn, revoked, or superseded by a valid order?

The permission granted vide memo dated 08.12.1989 is a crucial document that not only allowed the transfer to a co-operative society but also envisaged further transfer of flats to individual allottees. The letter dated 27.12.1989 from the Chief Secretary merely placed the matter for reconsideration and directed that no further action be taken until further orders.

However, no subsequent order revoking or modifying the said permission was ever brought on record. In the absence of any formal revocation, the permission granted in 1989 must be deemed to be valid and subsisting at the time the sale deeds were executed in 1991 and the construction was commenced.

Hence, the finding is that there was no lawful cancellation or withdrawal of the permission granted in 1989.

Issue No. 2: Whether the cancellation of the lease dated 19.06.1966 and the resumption of the possession of the land in question along with the structure present over the same, by the State Government vide letter dated 18.05.2004 (Annexure-13), and the consequential letter dated 14.09.2004



(Annexure-13(i)) issued by the Collector, Patna, was legally valid and sustainable?

Upon perusal of the materials on record, it is not in dispute that the lease deed dated 19.06.1966 was a renewed lease granted for 50 years commencing from 01.04.1966, which recognized the rights of the lessees over 0.234 acres of Khas Mahal land. The lease deed contained clear conditions regarding transfer and construction, requiring prior written permission from the Collector. It is not in dispute, rather admitted that vide letter dated 08.12.1989, permission for sale and construction of multistoried apartment by Midway Apartment Co-operative Housing Society Limited, Patna was granted by the competent authority.

The subsequent cancellation of lease in 2004 (Annexure-13) and (Annexure 13(i)) appears to have been founded on the alleged breach of lease conditions. However, the legality of such cancellation must be assessed in light of procedural safeguards, including notice and hearing, as well as the existence or otherwise of a formal withdrawal of the 1989 permission.

As already held above, there is no material on record to suggest that the permission granted in 1989 was formally revoked. Moreover, the conduct of the authorities post-1991, including



registration of sale deeds, mutation, acceptance of taxes, and lack of timely objection, indicates implied acquiescence.

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 ones dated 18.05.2004 and 14.09.2004 by holding the same to be contrary to the law laid down by this Court and also by the Apex Court.

In the present case as well, the lease of the Khas Mahal property in question has been cancelled, and direction for resuming possession of the land in question along with the structure present over the same has been passed without following the due process of law i.e, by approaching the Civil Court of competent jurisdiction.

This Court in the case of **Sanjay Singh & Others vs. Patna Municipal Corporation, reported in 2021 (1) BLJ 5**, which has been followed in Uday Sinha Case (supra), has unequivocally held that before exercising the right of resumption of possession of a leased land, the lease is required to be first determined in accordance with Section 111 of the Transfer of Property Act and only thereafter, resumption of possession can be



done by taking recourse to the due process of law. 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. Manifestly, no such procedure has been followed in the present case."

Accordingly, the cancellation and resumption of the land in question along with the structure present over the same appears to have been made without adherence to due process, and this Court finds the action of the State, prima facie illegal, arbitrary and unsustainable in law.

Issue No. 3: Whether the said cancellation was in violation of the principles of natural justice, especially in the absence of notice or opportunity of hearing to the original lessees, the co-operative society, or the petitioners who are flat owners?

The record discloses that neither the original lessees nor the Midway Co-operative Housing Society nor the petitioners (the flat owners) were issued any notice or provided any opportunity of hearing prior to the issuance of the cancellation order dated 18.05.2004 or the subsequent directive dated 14.09.2004.



Given that valuable rights had accrued in favour of the society and its members through registered sale deeds, recognized allotments, and long-standing possession, it was incumbent upon the respondents to follow the principles of audi alteram partem before taking any adverse action. The omission to do so renders the action procedurally unfair and violative of Article 14 of the Constitution of India.

The petitioners, being central to the Cooperative Housing society's execution of rights over decades, were never afforded any hearing before lease cancellation. This breaches audi alteram partem, a cardinal principle of natural justice. In **Sanjay Singh v. Patna Municipal Corporation (CWJC 6546 /2017)**, this Court pronounced:

“An order prejudicial to private rights cannot be passed without giving opportunity of hearing — to do so would be contrary to natural justice and violative of Article 14.”

Therefore, the cancellation and resumption of possession order is legally untenable as being violative of the principles of natural justice.

Issue No. 4: Whether the petitioners, being bona fide purchasers for consideration and in continuous possession for



over two decades, are entitled to protection under the doctrines of promissory estoppel, legitimate expectation, and equity?

The petitioners have placed sufficient materials on record to establish that they purchased the flats in good faith, relying on government permissions, registered documents, and sanctioned building plans. They have been paying taxes, maintaining possession, and residing in the premises without objection from any authority for nearly three decades.

The principles of promissory estoppel and legitimate expectation would apply in such circumstances where the State, by its conduct and representations, has induced parties to act to their detriment. Moreover, equity demands that parties who have acted in good faith and invested their life's savings in pursuit of a lawful right are not subjected to arbitrary deprivation of their property.

As held in **Uday Sinha v. State of Bihar, CWJC No. 9720 of 2021**: "*Once the State has encouraged or permitted action under its own policy and approval, it cannot resile without offering remedy or compensation, particularly when third-party rights have intervened.*" This Court, therefore, holds that the petitioners are entitled to equitable protection and that the impugned actions are contrary to the settled legal principles.



Issue No. 5: Whether the petitioners have any enforceable legal right to seek renewal of the lease or claim title/interest in the demised property despite not being original lessees or direct parties to the lease agreement with the State?

While it is true that the petitioners are not original lessees, the materials on record suggests that the transfer of leasehold interest to the co-operative society and, in turn, to individual members, took place with the full knowledge and tacit approval of the authorities. The permission dated 08.12.1989 itself envisaged that the new allottees would have to enter into fresh lease agreements with the State at the end of the term.

In view of the above, the petitioners, as successors-in-interest and bona fide purchasers, are entitled to be considered for renewal of lease, and the State cannot evade this obligation on technical grounds, particularly when the public authorities themselves facilitated and recognized such transactions.

Issue No.6: Whether the Collector, Patna could have referred the matter for carrying out eviction proceedings under Para 14 Chapter 4 of the New Khas Mahal Policy 2011, in respect of the Khas Mahal property in question, which was initially given on lease on 01.04.1916 and subsequently renewed for 50 years w.e.f 01.04.1966?



The property in dispute traces its origin to a lease granted by the Collector, Patna, on behalf of the Government of Bihar, in favour of one Ram Chandra Bhaduri on 01.04.1916 which was subsequently transferred, with due approval to Smt. Taru Balla Devi in 1932. Following a family settlement in 1956, the southern portion of the land devolved upon Devi Rani Devi and her successors, who were granted a renewed lease for a period of 50 years w.e.f. 01.04.1966 . Thereafter, on 08.12.1989, the Revenue and Land Reforms Department, Government of Bihar, granted permission to transfer the land in favour of Midway Apartment Cooperative Housing Society Limited, for the purpose of constructing a multi-storied residential apartment, pursuant to which, the sale deeds were executed in 1991 in favour of the said Cooperative Housing Society whereupon the residential apartment was duly constructed and sold to the petitioners. Subsequently, by orders contained in letters dated 18.05.2004 and 14.09.2004, the lease was cancelled, and directions were issued for resuming the possession of the land in question along with the structures present over the same. All these significant developments/events have taken place prior to the coming into existence of the New Khas Mahal Policy, 2011.



In the case of ***State of Bihar vs. Khas Mahal Citizen Welfare Society*** reported in **2017(3) PLJR 662**, learned Division Bench of this Court in paragraph-2 of the said judgment has already held and observed as follows:

“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 and the Society and 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 and 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 Government 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.”

In the light of the aforesaid finding of the learned Division Bench, it can be safely held that in the present case, also the eviction proceeding which was ordered to be initiated vide Letter No.3187 dated 04.11.2016 under paragraph, 14 Chapter-4 of the New Khas Mahal Policy, 2011 is unsustainable in law as the said Policy 2011 will not apply to the land in question involved in the present case.

11. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove and also considering the law laid down by this Court in the case of **Uday Sinha & Others (supra)**, this Court finds that the impugned orders dated 18.05.2004 and 14.09.2004 cancelling the lease and resuming possession of the land in question along with the structure present over the same, are quashed and set aside. The permission granted by the State Government vide letter dated 08.12.1989 for transfer and construction of apartments is held to be valid and operative. The respondent authorities are restrained from interfering with the peaceful possession of the petitioners, except in accordance with due process of law. The petitioners are granted liberty to file appropriate application before the competent Khas Mahal authority for renewal of lease, if they have not already



filed, which shall be considered expeditiously for renewal in accordance with law, after affording opportunity of hearing to the petitioners.

12. The writ petition stands allowed in the aforesaid terms. All pending I.As if any will be deemed to have been disposed of. There shall be no order as to costs.

(Alok Kumar Sinha, J)

Prakash Narayan

AFR/NAFR	AFR
CAV DATE	11.07.2025
Uploading Date	15.07.2025
Transmission Date	N/A

