
(2008) 12 JH CK 0046
In the Jharkhand High Court

Dr. Rajat Nath Roy

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 12-12-2008

Acts Referred:

Constitution of India, 1950 — Article 299, 300A

Citation : AIR 2009 Jhar 67

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Judgement

D.G.R. Patnaik, J.—Petitioner in this writ application, has prayed for an order for quashing, the direction contained in letter No. 2738 dated 16.7.2004 (Annexure-5/a) and letter No. 2957 dated 31.7.2004 (Annexure-5/b) respectively as also the letter dated 1355 dated 11.8.2004 issued by the respondent No. 2, under which the petitioner has been asked to deposit 50% of the market value of the lands by way of Salami for transfer of various plots of Khasmahal lease hold lands measuring 38.61 decimals out of plot Nos. 258 and 259 within the holding No. 79 situated at village Sarle within the P.S. and District of Hazaribagh. A further prayer has been made for issuing a writ of mandamus commanding upon the respondents to grant permission to the petitioner on the same terms and conditions of the original lease and not to make any additional condition in the terms of the lease.

Earlier, vide W.P.(C) No. 3284 of 2001, the petitioner had filed a writ application before this Court praying for a direction upon the respondents to grant him permission for transfer of the lease. In terms of the order dated 27.6.2001, this Court had issued direction to the Deputy Commissioner, Hazaribagh to dispose of the case relating to transfer of the land within three months.

Thereafter, the petitioner again filed another writ application vide W.P. (C) No. 5108 of 2003 before this Court, praying to direct the respondents to pass an appropriate order in the matter of Permission Case No. 25 of 2001, 39 of 2001 and 48 of 2001. in terms of its order dated 17.10.2003 passed in the aforesaid

writ application, this Court had issued direction to the Secretary, Revenue Department, Jharkhand, Ranchi to pass an appropriate order.

2. The case of the petitioner is that he being the power of attorney holder of Dr. Rajat Nath Roy. the lease holder of holding Nos. 108. 137. 77 and 79 at village Sarle, Sarkari Hata in the district of Hazaribagh, filed his application before the concerned authority of the respondents for grant of permission to transfer the leasehold lands. Three separate permission cases were accordingly registered vide Permission Case No. 25 of 2001, 39 of 2001 and 48 of 2001. The applications filed by the petitioner were examined by the concerned authorities of the Revenue Department at the various levels, whereafter the Deputy Commissioner, Hazaribagh recommended the case for permission to the Commissioner, North Chhotanagpur Division, Hazaribagh. On the recommendation granted by the Commissioner, North Chhotanagpur Division, Hazaribagh, the Revenue Department of the State of Jharkhand accorded previous permission order for transfer of the lands, vide letter dated 31.7.2004 issued by the Under Secretary to the Government of Jharkhand, Revenue Department. However, it was later communicated to the petitioner by the impugned order that the Government had agreed to grant permission for transfer of individual plots of lands, but on condition that the lessee should deposit @ 50% of the total market value in the Government Treasury under the specified Head by way of "Salami". It is this direction, as contained in the various impugned letters Issued by the respondent No. 2 demanding 50% of the total market value of the land in question at the present market rate by way of "Salami", that has been challenged in the present writ application, on, the ground that such direction is wholly arbitrary, illegal and unconstitutional and is against the terms and conditions of the original lease agreement.

3. Shri Sudarshan Srivastava, learned Counsel for the petitioner, would argue that the respondents have no jurisdiction to act contrary to the Clause 2 of the terms and conditions of the lease which reads that "except with the previous sanction of the Deputy Commissioner, in writing and on payment of fee equal to 25% yearly rental (provided that no such fee shall be less than Re. 1/- or more than Rs. 100/-)", the lessee shall not transfer, assign, sublet or any part thereof with the possession of the said demised lands and the premises or any part thereof.

Learned counsel argues that the conditions in the original lease agreement constitutes part of the registered contract between the State Government and the lessee and the terms and conditions of the lease bind both the parties and therefore, neither party can unilaterally modify or vary the terms and conditions of the registered deed of lease without the authority of the law and such action of the respondents is hit by the provisions contained in Article 299 of the Constitution of India. It is further argued that the impugned action of the respondents amounts to circumvent the provisions under which the lessee enjoys the right to transfer his lease hold right and therefore, it amounts to frustrate his

rights under Article 300-A of the Constitution of India. Learned Counsel argues further that the respondents have already granted permission for transfer, as prayed for by the transferee. Such grant of permission for transfer of the lease hold lands would only extend the lease hold right of the transferee for the remaining period of lease and as such, the respondents do not have any jurisdiction to charge salami to the extent of 50% of the market value.

Learned counsel argues further that the petitioner had admittedly filed his application seeking permission for transfer of lease, in the first quarter of the year 2001. At that time, terms of lease which then existed, were applicable in respect of payment of requisite fee for transfer/renewal of lease. Had the respondents taken action promptly on the application for permission, there could be no occasion for the respondent No. 2 to make any additional demand of "salam". Referring to a Division Bench Judgment of this Court passed in the case of Ananda Sen v. State of Jharkhand WPC 1805 of 2003, learned Counsel argues that amendment of one of the clauses of the agreement made on the basis of the Government Circular notified in the year 2002, cannot operate retrospectively, as has been laid down in the case of Ananda Sen (Supra).

4. A counter-affidavit has been filed on behalf of the respondents 2 to 6. While admitting the fact that the lands under reference in this case were given on lease to Dr. Rajat Nath Roy under separate lease deeds and the period of lease under all the lease agreements, were renewed which continued till March 2008 and that the permission for transfer of the lease as sought for by the attorney holder of the registered lessee has also been granted by the concerned authority of the respondents, the stand taken by the respondents is that the demand for salami has been imposed as per the orders of the Government of Bihar vide letter No. 344 dated 11.3.1993 issued by the Secretary to Government, Revenue Department which stipulates that the State Government has every right to amend the terms and conditions of the agreement by issuing a circular. It is further contended that the lessee can enjoy the lease hold property for the leased period and if he wants to transfer the lease hold land, he has to abide by the terms and conditions imposed by the State Government from time to time. Denying the claim of the petitioner that the order demanding salami is arbitrary, it is sought to be explained by the counsel for the respondent that the rate of salami has been fixed as per the present market value of the property:

5. The sole question which calls for determination in this case is, whether the amendment in the terms of lease carried out pursuant to the Government Circular notified on 19.1.2002 under which a condition was inserted for demanding "salami! @ 50% of the market value, can be made" applicable retrospectively to those applications for renewal/transfer which were pending before the respondent authority much prior to the date of issuance of the notification?

6. As has been observed by the Division Bench of this Court in the case of Ananda Sen (Supra), it cannot be disputed that renewal/transfer of the

Khasmahal lease granted under the provisions of Khasmahal Manual, is a right granted to the lessee subject to the limitation mentioned in the terms of the lease or as laid down under the provisions of the Khasmahal Manual.

7. Since learned Counsel for the petitioner confines his argument only to the issue as to whether the notification of 2002 can be made applicable with retrospective effect, the issue as to whether the notification itself is illegal or arbitrary or ultra vires, is not taken up for consideration.

8. In the resent case, admittedly, the applications seeking permission for transfer of the lease were filed some time in the first quarter of the year 2001. At that time, the period of lease after the last renewal, stood extended up to March 2008. The transfer of lease in favour of the purchaser would not have had any effect upon the period of lease and the same terms and conditions, as contained in the terms of original lease, would have continued to bind the transferee also. The terms and conditions of lease in respect of renewal/transfer, as it originally existed, did not contemplate any demand for "salami. The introduction of an additional condition for payment of "salami @ 50% of the market value was made in the month of February 2002 vide the Government Circular. The new introduction of an additional condition in the lease agreement cannot be applied retrospectively to the application seeking permission which was pending before the concerned authority of the respondents much prior to the date of amendment made in the conditions of the lease agreement.

9. In the light of the aforesaid facts, I find merit in this application. Accordingly, the same is allowed. The impugned orders as contained in Annexure-5 series of the supplementary affidavit filed by the petitioner, are hereby set aside. Since permission for transfer of the lease has already been granted to the petitioner, the respondents shall consider the demand for payment of the requisite fee in accordance with the terms and conditions as contained. in the original lease agreement.

10. With the above observations, this writ application is disposed of.