
(2003) 02 JH CK 0064
In the Jharkhand High Court
Case No : CWJC No. 2370 of 1996 (R)

Jagat Nath Mukherjee and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 27-02-2003

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (2003) 2 JCR 217

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : R. Krishna and P.K. Prasad, for the Appellant; P. Modi, GP-I, for the Respondent

Judgement

Tapen Sen, J.—The petitioners pray for quashing the order dated 22.8.1984 as contained at Annexure-1 by which the Deputy Commissioner, Hazaribagh resumed the land belonging to the petitioners. The petitioners further pray for issuance of a writ of mandamus commanding the respondents, specially the respondent Nos. 3 and 4, to pass appropriate orders in terms of the order of the Commissioner, Land Reforms passed on 28.2.1990 in L.A. case No. 51 of 1989. The petitioners also pray issuance of a writ of mandamus commanding the respondents to renew the lease of the petitioners and not to interfere with their possession.

2. According, to the petitioners, the land in dispute relates to plot Nos. 121. 122. 123 and 124 measuring an area of 3.57 Acres situated on holding No. 121 of Village-Hazari in the District of Hazaribagh. The land is a Khas Mahal Land and it was given as a Building Lease in the year 1918 for a period of 30 years. Thereafter, the lease was renewed for a fresh period of 30 years on 19.6.1948 whereafter an application for renewal was again placed for consideration in the year 1976. The petitioners have stated that during the pendency of the aforementioned renewal application the father of Nilmani Mukherjee died on 29.4.1981. The petitioners have given details of the legal heirs and successors of

the original lessees and the manner in which the leasehold was dealt with inter se amongst various members of the family. They have further stated that there has not been any breach of the terms and conditions of the lease. There were several buildings during the renewal of 1920 and 1948 which stood till 1955, but these buildings had become very old and fragile. Moreover due to differences within the family members, the same became uncared for leading to their collapse, but this does not in any way mean that there was violation of any of the terms and conditions of the lease. The petitioners have further stated, without making any admission (at para 9) that even letting out portions are expressly permitted under the lease terms and even commercial use was permitted by letter dated 5.2.1948 at the time of renewal of the lease in the year 1948 itself. The petitioners have quoted the relevant portion of the said letter which reads as follows :--

"The rent of the building leases at the rate of 40% will be increased by 50% but if the premises are used for commercial purposes, the rent will be increased to 100%."

3. The petitioners have stated that although there was no violation whatsoever, the Deputy Commissioner, suddenly passed an order on 22.8.1984 vide Annexure-1 whereby he was pleased to resume the entire land without assigning any reasons.

4. Being aggrieved, an appeal vide L.A. case No. 51 of 1989 was preferred and by order dated 28.2.1990, the Land Reforms Commissioner remanded the matter for reconsideration vide Annexure-2. After remand, the matter was considered by the Deputy Commissioner only in relation to three persons namely Shakti Kumar Mukherjee, Sudhir Kumar Mukherjee and Sant Kumar Mukherjee but the case of the petitioners were not considered although the lease deed was one and renewal application was filed jointly and although the petitioners were also parties before the Land Reforms Commissioner. The petitioners have brought on record Annexure-3 which is the order sheet and have submitted that grant of renewal only in respect of three persons and not in respect of others was not a proper consideration of the matter. According to the petitioners, the Deputy Commissioner has given benefit of the order of the Land Reforms Commissioner to others but not to the petitioners on a wrong presumption that the petitioners had not filed an appeal although the fact was that the petitioners were parties before the Land Reforms Commissioner and they had also sent their reply supporting the case of all the other co-sharers/members who belonged and claimed under one lease deed.

5. The petitioners have further stated that the respondents have no jurisdiction to resume the lease and take forcible possession. They have also submitted that the last lease deed which was executed in the year 1948 (Annexure-5) did not contain any such grounds of automatic resumption.

6. The petitioners have given a description of the manner in which the family

members are related to each other and the manner in which the allotments were made in relation to the land in question. The said statements are given at paragraphs 5 to 8 and the relevant portion thereof are quoted below :--

"5. That originally the land is a khas mahal land and the same was given as building lease in the year 1918 for a period of 30 years. Thereafter again the lease was renewed for 30 years on 19.6.1948. Thereafter the application for renewal was placed in 1976.

6. That during the pendency of the renewal application of the lease the father of Nilmani Mukherjee died on 29.4.1981.

7. That in 1948, the lease for the above land was renewed in the name of Dharni Mohan Mukherjee, Khity Nath Mukherjee, Jagarnath Mukherjee S/o " Mohini Mohan Mukherjee and Jamini Mohan Mukherjee. Among these Dharni Mohan Mukherjee, Mohini Mohan Mukherjee, Khity Nath Mukherjee and Jamini Mohan Mukherjee are now dead. The successors and heirs are mentioned in genealogical table below :

Mohini	Mohan	Mukherjee		_____
_____				Dharni Mohan Mukherjee
Khity Nath Mukherjee	Jagarnath Mukherjee	Wife (Petitioner No.1)	Omiya	
Mukherjee died on 29.4.1981 (alive)				Chandan Kumar Mukherjee Nilmani
Mukherjee (Petitioner No. 3)	(Petitioner No. 2)	Jamini Mohan Mukherjee		
_____		_____		
Khakti Kumar Mukherjee	Sudhir Kumar Mukherjee	Sant Kumar Mukherjee		

(Description of petitioners supplied by Court)

8. That so far the petitioners know that there was a partition among Jamini Mohan Mukherjee on the one hand and the sons of Mohini Mohan Mukherjee on the other hand and according to partition, Jamini Mohan Mukherjee was allotted eastern half portion of the land of holding No. 121 and western half to the heirs of Mohini Mohan Mukherjee and they remained in possession accordingly. Jamlni Mohan Mukherjee since dead, his sons are in possession. Similarly, after the death of Dharni Mohan Mukherjee and Khity Nath Mukherjee, their respective heirs are in possession."

7. The petitioners have also filed an amendment application wherein they have prayed for quashing part of the order dated 21.2.1996 as contained in Annexure-3 which shows that resumption of the land belonging to the petitioners and accordingly it has been stated out that the total land (1.78 1/2 acres) 1 acre of the land has been recommended to be given to the police club and .078 1/2 acres of the land has been recommended to be given to the Khalsa School, They further pray for quashing of the letter of the Deputy Commissioner, Hazaribagh addressed to the Commissioner, North Chhotanagpur Division, Hazaribagh dated 4.12.1995 wherein recommendation was made for renewal of the lease to the extent of 1.78 1/2 acres in favour of S.K. Mukherjee and observations were made against renewal in relation to the other 1.78 1/2 acres of land belonging to

Mohini Mohan Mukherjee (predecessor in interest of the petitioners) saying that the same had already been resumed.

8. Learned counsel for the respondents has submitted that the lease was renewed in the year 1948 for another period of 30 years in the name of Jamini Mohan Mukherjee son of late Adhar Kali Mukherjee, Dharni Mohan Mukherjee for self and guardian of Abni Mohan Mukharjee, Khity Nath Mukharjee Jagarnath Mukharjee son of late Mohini Mohan Mukharjee for the land of village Hazari Thana No. 141 holding No. 121 plot No. 121, 122, 123 and 124 measuring an area 3.57 acres of land. Thereafter, Sri Shakti Kumar Mukharjee had applied for renewal of lease from 1.4.1978 to 31.3.2008. On the basis of such option, a lease renewal case No. 39/77-78 was started and enquiry was started by the Halka Karamchari. Kanungo and the Khas Mahal Officer. On enquiry it was found that the lessee had violated condition No. 9 and 8-A. Therefore, a show cause notice was " issued to explain why the lease should not be cancelled as per condition 14 of the lease agreement. The petitioner filed his show cause. On perusal of show cause the same was found not satisfactory. Therefore, recommendation was made for resumption of entire holding and records were sent to the Divisional Commissioner for approval. The Divisional Commissioner approved the proposal of resumption vide letter No. 1514 dated 7.6.1984. Accordingly resumption order was served on the petitioner and possession was taken. They have further stated that the heirs of the lessee constructed several shops in violation of Clause 8-A of the Lease Deed and let out shops to different persons for commercial purpose. They have also submitted that the land on the Eastern side having been found to be vacant, it was a violation of condition No. 9 of the Lease Deed. They have further stated that on remand the Divisional Commissioner asked for a local enquiry from the Deputy Commissioner, Hazaribagh. The Deputy Commissioner, Hazaribagh submitted his report to the Divisional Commissioner alongwith a Map. On spot inspection it was found that the Eastern part of holding No. 121 plot No. 121, 122, 123 and 124 measuring as area of 1.78 1/2 acres was vacant (khali Parti) and land measuring 1.78 1/2 acres of Western side was found to be in possession of different persons who were running a business. Thereafter only 1.78 1/2 acres land was recommended for renewal which was in the share of Sanat Kumar Mukherjee, Shakti Kumar Mukharjee sons of Jamuni Mohan Mukharjee and others only. The petitioner, and other co-sharer did not press their case either before the Land Reforms Commissioner, Bihar Patna or Divisional Commissioner should not be allowed any consideration.

9. They have also submitted that the petitioners should move the State Government in the Revenue Department for redressal of their grievances and that the respondents have full power and jurisdiction to resume the lease hold and take possession.

10. The contention of the respondents are rejected. It is admitted case that the lease was granted in the year 1918 which was a Building Lease and in the year

1948 the lease was last renewed. There was a specific clause that the rent of the building lease at the rate of 40% will be increased by 50% and if the premises are used for commercial purposes, the rent will be increased to 100%, The respondents have not even bothered to touch this particular aspect which has been asserted specifically by the writ petitioners at para 9 because in reply thereto, all that the respondents have stated is that the heirs constructed several shops and let them out to different persons.

11. Resumption of Khas Mahal Lease cannot be allowed just like that. The State cannot refuse to renew the lease and all that the respondents could have done was to have enhanced the rent. Subject to this limitation, the lessee was entitled as a matter of right to renewal of the lease in a routine course. Reference in this context may be made to the case of Rajat Nath Roy and Anr. v. State of Bihar and Ors., reported in 1993 (2) PLJR 348 cited by the learned counsel for the petitioners. Similarly, if the respondents have taken possession of the land in question as has been stated by them in Annexure-4 to the writ application and para 7 and 17 of the Counter Affidavit, then the same must also be held to be arbitrary, illegal and wholly unconstitutional. The Khas Mahal Leasehold amounts to a property within the meaning of Article 300A of the Constitution of India and it cannot be taken away just like that and on the basis of the whims and caprices of the Revenue Authorities of the Government. Mere notice, as stated, is not sufficient. If the Government wanted to take possession, it could have done so only by taking recourse to a process known to law i.e. through the Civil Court and that too, if the requirement was justified for a public cause and after obtaining sanction of the Government.

12. He learned counsel for the petitioner, in support of the aforesaid contention relied upon the case of Ramendra Nath Khan v. State of Bihar and Anr., reported in 1988 BLT 540 and also to the case of Brinda Basani Devi v. State of Bihar, reported in 1989 (37) (2) BLJR 354. These petitioners have been living on this area for such a long period right from 1918 and every family has its ups and downs and if with the passage of time, the lessee lets out portions of the lease to earn their livelihood, the same cannot be termed to be such a gross violation authorizing the Khas Mahal Authorities to resume the land. Resumption of the land and taking forcible possession on such a ground amounts to virtually inflicting a punishment which is an extremely harsh step and totally disproportionate in the facts and circumstances of this case. The authorities under the Khas Mahal have no right to refuse the renewal of leases. Reference in this context can be made to the case of Deba Jyoti Dutta and Ors. v. State of Bihar and Anr., reported in 1987 BLT 265. In that case, the High Court held that the authorities under the Khas Mahal Manual cannot take forcible possession and the High Court has jurisdiction to direct restoration of possession. It has also been held that renewal is a right and the authorities cannot act arbitrarily. Similar view has been taken in the case of Manmohan Lal Bhagat v. State of Bihar and Ors., reported in 1987 BLT 276. It is also important to mention that the lease which was executed, way back in the year 1918 conferred a right upon

the petitioners to have and to hold the property. Although it was for a period of 30 years, yet it constituted a promise on the part of the respondents to renew the lease because option for renewal was contained in the said lease deed itself. Therefore, renewal is a mere formality and it cannot be taken away by officers of the Revenue Department. In fact renewal of lease must be granted automatically.

13. The other ground submitted by the respondents to the effect that portions of the land were lying vacant and, therefore, it amounted to the violation of the deed of lease, must also be rejected. It is not expected that a lessee must build and construct on every inch and every millimeter of the area in question. Every human being is entitled to have free space for various uses including fresh air, moving, around and for so many other things which are associated with the daily living of a person. It is now a well-known constitutional concept that the right to life enshrined under Article 21 of the Constitution includes the right to live decently and that right includes the right to move around freely, have fresh air/ environment and a right to have a decent living. Leaving open space therefore, cannot be termed to be a violation in any form whatsoever because if it is so regarded, it would totally upset constitutional philosophies. Such grounds have therefore, obviously been taken only for purposes of justifying their illegal action of resuming the land in question.

14. For the foregoing reasons if the State Respondents had taken forcible possession, the same having been held to be illegal, this Court directs that the same must be delivered back to the petitioner forthwith. Moreover, if the State Respondents had illegally and forcibly taken possession without recourse to law then they must also compensate the petitioners. This is one of those cases where this Court seriously considered to grant monetary compensation to the petitioners, but later on was of the opinion that instead of doing so, an order should be passed in such a manner that justice is delivered to the petitioners at their doorsteps. The concept of compensation should not always be construed to mean monetary compensation. The concept of compensation also includes justice being delivered at the doorstep of a person who has suffered at the hands of the respondents. In that view of the matter and giving effect to the concept of delivery of justice at the doorstep this Court directs the Deputy Commissioner and other concerned officers including the Halka Karamchari and Khas Mahal Officer, Hazaribagh to personally go to the petitioners and ensure restoration of possession of the lands in their favour. These officers must also renew the lease of the petitioner simultaneously and for such execution of the deed of lease relating to renewal thereof, it shall not be the responsibility of these petitioners to visit or go to the offices of the aforementioned State Officers at all. These officers shall execute the lease and do everything in accordance with law in the presence of the petitioners wherever they be and at their place of choice. This is the least that the State must do to compensate the feeling of humiliation and injustice that was meted out to them. This would be fulfilling the concept of delivery of justice at the doorstep of the petitioners. Let it be recorded that both the handing over of possession (i.e. the restoration of the lands) and execution

of the deed of lease shall now be done by the respondents within 30 days from the date of receipt of a copy of this order and without causing any further harassment and humiliation to the petitioners.

The writ petition succeeds and the impugned orders are hereby quashed. No order as to costs.