

(2001) 08 PAT CK 0084
In the Patna High Court
Case No : C.W.J.C. No. 7028 of 2001

Md. Mehandi Imam @ Mehdi Imam

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 09-08-2001

Acts Referred:

Citation : (2001) 08 PAT CK 0084

Final Decision : Dismissed

Judgement

Narayan Roy, J.—Heard Mr. Navin Sinha, learned Counsel appearing on behalf of the petitioner and Mr. V.N. Sinha, Government Pleader No. 9 for the State.

2. This question, which has fallen for consideration in this writ application, is as to whether the petitioner, who at one point of time was a lessee from the State of Bihar under the provisions of the Bihar Government Estates (Khas-Mahal) Manual, 1953 (hereinafter to be referred to as "Khas-Mahal Manual"), could have been evicted by a summary proceeding without resorting to the provisions of Rule 22 of the Khas-Mahal Manual even after the period of lease had expired long back.

3. The short facts giving rise to this writ application, which emerge from the facts enumerated in the writ application and the counter-affidavit, are as under:

It appears that a piece of land measuring 12"x 25" having an area of 300 sq. ft. situate in village Moharrampur under Kotwali Police Station in the District of Patna, being part of Municipal Survey Plot No. 1132, Sheet No. 51, Ward No. 2, Circle No. 9 within the Patna Municipal Corporation was settled in favour of the petitioner on temporary basis vide lease deed dated 10-10-1971 for a period of three years under the provisions of the Khas-Mahal Manual and the same expired on 9-10-1974 and even after expiry of the period of the lease, the same was not renewed by the State authorities and the prayer of the petitioner was rejected for renewal by the State Government vide order as contained in Memo No. 2931 dated 27-5-1975.

4. The petitioner thereafter came to this Court against the order refusing to renew the lease deed in Civil Writ Jurisdiction Case No. 1532 of 1976, which was disposed of on 13-7-1976 and a direction was issued to the effect that in case, the petitioner has not vacated the land of his own accord, then the authorities will proceed to evict him from the land in question only in accordance with law, be it under the Bihar Public Land Encroachment Act (hereinafter to be referred to as "Act") or under any other relevant law.

5. The prayer of the petitioner for renewal was again rejected by the State Government and the same was communicated to the petitioner vide letter No. 580 dated 7-3-1991. It further appears that the petitioner even thereafter continued in possession of the land in question. The State authorities thereafter insisted the petitioner for vacation of the land in question and on failure on the part of the petitioner the State authorities demolished the temporary structure raised over the land in question and tried to evict the petitioner some time in the year 1999. The petitioner thereafter moved this Court in Civil Writ Jurisdiction Case No. 11787 of 1999 against the alleged arbitrary action of the State authorities. The writ application aforesaid, however, was disposed of on 14-1-2000 and the State authorities were directed to proceed in accordance with law.

6. The State authorities thereafter initiated a proceeding u/s 3 of the Act and show-cause notice was issued to the petitioner on 18-3-2001 asking him to file a show-cause in the Court. The proceeding, ultimately, as it appears, was concluded ex parte on 23-5-2001 and a final order was passed u/s 6 of the Act by the Collector under the Act and a notice, as contained in Annexure-6, was effected on the petitioner to remove the encroachment from the land in question giving rise to this application.

7. It is submitted by learned Counsel appearing on behalf of the petitioner that even though the lease deed was not renewed after its expiry in the year 1974, the entry of the petitioner upon the land in question cannot be said to be illegal or unauthorised and in that view of the matter, the petitioner could not have been sought to be evicted from the land in question in a summary proceeding without resorting to the procedure laid down under Rule 22 of the Khas-Mahal Manual. It is further submitted that the petitioner was only liable to be evicted from the land in question after due process of law, as contemplated under Rule 22 of the Khas-Mahal Manual and since, admittedly, no decree has been passed by a competent Civil Court for evicting the petitioner, the petitioner could not have been asked to remove the structure or to vacate the land in question.

8. Mr. V.N. Sinha, learned Government Pleader No. 9, appearing on behalf of the respondent State, on the contrary, submitted that the petitioner since was in unauthorised possession over the land in question after expiry of the period of the lease deed in the year 1974, his status was that of a trespasser and he was liable to be evicted under the provisions of the Act. It is further submitted that as per the earlier direction of this Court, issued in Civil Writ Jurisdiction Case No.

1532 of 1976, as contained in Annexure-2, whereby and whereunder a liberty was given to the State Authorities to evict the petitioner even by resorting to the provisions of the Act, a proceeding under the Act was initiated against the petitioner and a notice was issued to him and the petitioner intentionally did not file his show cause, though he had appeared in, the proceeding by filing a petition for time, and, therefore, final order u/s 6 of the Act was passed and the petitioner was directed to remove the encroachment vide notice, as contained in Annexure-6 to the writ petition.

9. Learned Counsel appearing on behalf of the petitioner then submitted that this Court vide orders as contained in Annexure-3 series, deprecated the action of the State authorities, whereby and whereunder the structure of the petitioner over the land in question was demolished by using force and directed the authorities to proceed in the matter after following the due process of law for eviction of the petitioner, and, therefore, the petitioner could have been evicted only after resorting to the provisions under Rule 22 of the Khas-Mahal Manual.

10. From the facts enumerated above as also from the submissions made at the bar, it is manifest that the petitioner has not claimed the land in question by acquiring title save and except by virtue of a lease deed granted by the State authorities in the year 1971, which expired in the year 1974. It is also manifest that complicated question of title and possession are also not involved in the matter and the petitioner wants to establish his entry on the land in question only by virtue of the lease deed, which expired in the year 1974, which was never renewed.

11. Law on this point is settled by various decision of this Court and also of the apex Court In the case of *Midinapur Zamindari Co. Ltd. v. Naresh Narayan Roy* 51 Ind. App. 293, 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. In the case of *Krishna Ram Mahale (Dead), by his Lrs. Vs. Mrs. Shobha Venkat Rao*, ; it was held by the Apex Court 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.

12. Again in the case of *State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others*, , it is held that though in exercise of power under Article 226 of the constitution the Court cannot go into the question as to whether forfeiture and cancellation of lease are valid or not. A lessor, however, with the best of title has no right to resume possession except 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 extra-judicial method to resume possession. Under law, the possession of lease even after expiry or its earlier termination is judicial possession and forcible dispossession is prohibited; a lessee cannot be

dispossessed otherwise then in due course of law.

13. From the ratio laid down by the Privy Council and by the apex Court, as noticed above, it is clear that under our Jurisprudence even an unauthorised occupant can be evicted only in the manner authorised by law and this is the essence of the Rule of Law.

14. From the orders, as contained in Annexures 2 and 3 series of the writ application, it appears that this Court, though had deprecated the earlier action of the State authorities, issued directions to proceed against the petitioner for his eviction in accordance with law. It appears that this Court vide order as contained in annexure-2 even had directed the State authorities to get the petitioner evicted from the land in question even by resorting to the provisions of the Bihar Public Land Encroachment Act.

15. It is not the case of the petitioner that the petitioner by virtue of the notice, as contained in Annexure-6, is being evicted forcefully from the land in question, rather it appears that the petitioner has been sought to be evicted from the land in question in due process of law, inasmuch as that a proceeding u/s 3 of the Act was initiated against the petitioner, and, ultimately, final order u/s 6 of the Act was passed and notice was caused to be served on the petitioner, which is under challenge.

16. In the background of the matter, it is, therefore, held that the petitioner is not being evicted forcefully from the unauthorised occupation rather he is being evicted in the manner authorised by law. The action of the State authorities, in the view of the matter, cannot be said to be arbitrary or without authority of law, inasmuch as they have resorted to the procedures of law in getting the petitioner evicted from the land in question.

17. Mr. Navin Sinha, learned Counsel appearing on behalf of the petitioner, however, in support of his proposition has placed reliance upon a bench decision of this Court in the case of the Giant Public Library an Institute, Gardanibagh, Patna v. State of Bihar 1995(1) PLR 585 and in the case of Ashwani Kumar Gupta v. State of Bihar 2000(2) PLR 221 and has submitted that once the petitioner came in possession of the land in question by virtue of a lease deed granted under the provisions of the Khas-Mahal Manual even after termination of the lease deed, his occupation shall be deemed to be under the provisions of the Khas-Mahal Manual itself, and, therefore, he is only liable to be evicted by virtue of a decree passed by a competent Civil Court, as envisaged under Rule 22 of the Khas-Mahal Manual.

18. In the case of the Gait Public Library (supra), a Bench of this Court while dealing with a case, where the Collector in exercise of power under Rule 21 of the Khas-Mahal Manual resumed the land, and, in that context, held that the action of the State authorities in purported exercise of power under Rule 21 of the Khas-Mahal Manual was wholly without jurisdiction and the provisions contemplated under Rule 22 of the Khas-Mahal Manual was applicable for

eviction of the occupant.

19. In the case of Ashwani Kumar Gupta (supra), this Court, dealing with a question, where the writ petitioner was, claiming title and possession by virtue of the entries made in the revenue records u/s 103 of the Bihar Tenancy Act in favour of the petitioner even though the earlier settlement in favour of the occupant was under the provisions of the Khas-Mahal Manual, held that the petitioner was only liable to be evicted in due process of law in the manner authorised by law.

20. In this view of the matter, the ratio laid down by this Court in the aforesaid two cases are not applicable in the facts and circumstances of the case at hand.

21. Having heard Counsel for the parties and appreciating the rival contentions raised at the Bar, it is held that the petitioner after termination of the lease deed in the year 1975 was liable to be evicted by initiating a proceeding under the Act and in the given case, therefore, there was no requirement for resumption of the land in question, as prescribed under Rule 22 of the Khas-Mahal Manual.

For the reasons and findings aforesaid, I do not find any merit in this writ application.

22. In the result, this application is dismissed. No order as to costs.