
(2014) 02 PAT CK 0022
In the Patna High Court
Case No : CWJC No. 8175 of 2013

Najma Begum

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 05-02-2014

Acts Referred:

Bihar Municipal Act, 2007 — Section 104, 25(5)
Transfer of Property Act, 1882 — Section 108

Citation : (2014) 1 PLJR 657

Hon'ble Judges : Kishore Kumar Mandal, J

Bench : Single Bench

Advocate : Shashi Bhushan Kumar Mangalam, Advocate for the Appellant;
Basant Kumar Choudhary, Sanjay Kumar, Munnu, Mritunjay Kumar, Shambhu
Sharan Singh and R.C. Sinha, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Kishore Kumar Mandal, J.—The petitioner claiming himself to be one of the Councilors of Sasaram Nagar Parishad (for short "the Parishad" filed the present writ petition as a public interest litigation seeking issuance of appropriate writ commanding the respondents to make enquiry in the matter of mutation/assessment of Municipal land in the name of Respondent No. 7 pertaining to Survey Plot No. 1227, Khata No. 368 (Revisional Municipal Survey Plot No. 223) as the same is in violation of the provisions contained in Section 104 of the Bihar Municipal Act, 2007 (for short "the Act"). A prayer is also made for commanding the respondent No. 2 to take appropriate action for removal of Respondent No. 6 from the post of Chief Councillor of the Parishad in terms of the provisions contained in Section 25(5) of the Act for which a representation (Annexure-9) was filed by several Councilors. A Division Bench of this Court having considered the matter did not find it a case to be entertained as public interest litigation and granted the leave sought by the petitioner to convert it into a writ petition by order dated 17.4.2013 and that is how the case has been placed before this Court. Heard Mr. Mangalam for the petitioner, Mr. Mritunjay Kumar, A.C. to

A.A.G.-10 for the State, Mr. Basant Kumar Choudhary assisted by Mr. Sanjay Kumar Mantu, Mr. Shambhu Sharan Singh for respondent No. 7 and Mr. R.C. Sinha for respondent Nos. 4 and 5. Parties have exchanged the pleadings.

2. The Counsel for the petitioner has submitted that mutation/assessment in favour of Respondent No. 7 has wrongly been allowed by the Executive Officer of the Parishad vide order contained in Annexure-5 little realizing that the applicant (Respondent No. 7) was the transferee of the land which was leased in favour of the original lessee namely Sheikh Ashraf Hussain. There is no controversy that the said piece of land was leased out to Sheikh Ashraf Hussain on payment of Nazrana and regular rent thereagainst in the year 1961. The original lessee having died, his heir(s) is initially said to have executed a document (a sale deed) in favour of the Respondent No. 7 with respect to the said land but subsequently a document of assignment of the said land was executed in favour of Respondent No. 7. Based on that, the impugned order has been passed. Mr. Mangalam submitted that in passing the impugned order in an arbitrary manner giving undue benefit to the Respondent No. 7 misconstruing the documents of conveyance/transfer, the Respondent No. 6 played an important role. It has thus been contended that the respondent No. 6 has acted in gross illegal manner causing harm to the property of the Parishad.

3. Mr. Choudhary, learned counsel for Respondent No. 6, on the other hand, has raised a preliminary objection with regard to the maintainability of the writ petition by the petitioner seeking the aforesaid relief(s). It is contended that any person having no direct interest in the subject matter may invoke the writ jurisdiction of this Court if the issue is of great public importance by filing a public interest litigation. Any such writ application could also be filed by a person having no direct interest if a writ of quo warranto is prayed for. The same is not the case in the present case and as such the present application filed by the petitioner for the said relief is fit to be rejected. He further argued that even otherwise, the Writ Court would not go into the nature of dispute raised in this case where the nature of the document/instrument of conveyance is to be examined which would necessarily call for production of evidence and appreciation thereof. Referring to the provisions of the Transfer of Property Act, it has been submitted that a lessee can always re-assign or sub-lease the land. The issue raised herein is essentially a civil dispute affecting rights/interest of the parties. If the petitioner has any grievance then he may move a resolution in the meeting of the Parishad for appropriate steps for disapproving the said lease/assignment/sale deed said to have been made by the heirs of the original lessee in favour of Respondent No. 7. As about the challenge to the assessment/mutation order passed by the Executive Officer is concerned, it has been stated that the same can be challenged by filing a suit in the Court of District Judge in terms of the provisions of the Act.

4. Learned counsel for the Respondent No. 7, while adopting the submission of Mr. Choudhary, submitted that any document registered can only be annulled/set

aside by a Court of competent civil jurisdiction. He also emphasized that u/s 108 of the T.P. Act, the lessee has right to transfer/assign/sublease the land. In any view of the matter, the import or effect of the document of conveyance cannot be gone into by this Court in exercise of its power to judicial review.

5. Learned counsel for the respondent State submits that the District Magistrate has made an enquiry in regard to the manner in which the aforesaid land was permitted to be conveyed/sub-leased/assigned to Respondent No. 7 and accepting the same order of mutation/assessment was passed in favour of respondent No. 7. The role of the Chief Councillor in accepting such re-conveyance/assignment/sub-lease of the land leased out to the original lessee by the Parishad has not been found above board. The matter has been placed before the Principal Secretary for appropriate steps/action.

6. Without going into the maintainability of this application as raised by the respondents, it appears the grievance relating to removal of the Respondent No. 6 for his alleged misconduct is already resting before the appropriate authority of the Government to take needful action in terms of Section 25(5) of the Act. Mr. Mangalam learned counsel for the petitioner states that the petitioner be granted liberty to pursue the said matter in the light of representation filed by some of the Councilors and the report submitted by the District Magistrate.

7. As about the another grievance relating to sustainability of the order of mutation/assessment passed by the Executive Officer of the Parishad in respect of the said land in favour of Respondent No. 7, the petitioner, if so advised, should take appropriate steps to challenge the said order in terms with the provisions of the Act. The application stands disposed of with aforesaid observation(s)/liberty.