

(2013) 07 PAT CK 0041
In the Patna High Court
Case No : CWJC No. 21920 of 2011

Sheo Prasad Sinha and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 02-07-2013

Acts Referred:

Citation : (2013) 4 PLJR 783

Hon'ble Judges : Ajay Kumar Tripathi, J

Bench : Single Bench

Advocate : Mukeshwar Dayal and Vikas Mohan, for the Appellant; Zaki Haidar, for the Respondent

Judgement

Ajay Kumar Tripathi, J.—A serious decision having serious consequences for a citizen cannot be taken in a cursory fashion. This is one of those cases in which such a situation seems to have arisen. The above observation is based on the material or evidence, which has been brought by the State Counsel in the supplementary counter affidavit, which came to be filed on 23.1.2013 as well as on the basis of Annexure-A, and the so-called noting of the Collector or the Additional Collector recorded in the file. The background to the present dispute is that the original petitioner has been a lessee of a piece and parcel of land, which is a Khas Mahal land. The requisite deed with regard to the said land was executed many many years ago, to be precise in the years 1931 and 1941. An application came to be made on the basis of a so-called inquiry or report that the petitioner has violated the lease conditions by commercially exploiting the land when the settlement was for a dwelling unit. Notices came to be issued purportedly on the said violation but there is no clear cut evidence emerging therefrom. The Court has no hesitation in saying so after the best piece of evidence was brought by the State or the district authorities in their supplementary counter affidavit.

2. An old lease subsisting in favour of the petitioner having implications for him from generation to generation cannot be summarily terminated or determined by

the State Government in the fashion they would like to do. The terms and conditions agreed between the parties indicate that the lease is in perpetuity though there are certain inherent do's and don'ts, which the petitioner had agreed to in terms of the lease agreement. Even if the lease is with regard to Khas Mahal land, the lease cannot be terminated in the fashion and the manner in which the State Government would like to. It may also cannot impose its terms and conditions on the basis of so-called 2011 Khas Mahal Policy in vogue.

3. It is a matter in which a proper legal notice has to be given to the petitioner indicating the grounds of violation, if the respondents still want to pursue the matter. It will be open to the petitioners to respond thereto and thereafter considering the explanation offered by the petitioners, an appropriate decision would be required to be taken. A unilateral decision of the kind, first accepting the deposits by the petitioner from time to time and then declining to do so, cannot create a situation for cancellation of lease of the petitioners.

4. The impugned order contained in Annexure-1 and the communication contained in Annexure-12, dated 25.6.2012 are hereby quashed. Writ application is allowed.