

**(2004) 02 PAT CK 0005**  
**In the Patna High Court**  
**Case No : C.W.J.C. No. 14100 of 2002**

Smt. Usha Sinha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

**Date of Decision :** 26-02-2004

**Acts Referred:**

**Citation :** (2004) 02 PAT CK 0005

**Final Decision :** Dismissed

## Judgement

Radha Mohan Prasad, J.—In this writ petition, the Petitioner has assailed the validity of the order dated 8.10.2002, contained in Annexure 6, passed in Misc. Appeal No. 8/2002 by the Commissioner, Patna Division (Respondent No. 2).

2. The said appeal was filed by Respondent No. 5 against the order dated 15.12.2001, contained in part of Annexure 5, passed by the Collector, Patna in Misc. Case No. 10/2000-2001 preferred by the Petitioner, whereby no objection certificate granted under Rule 151 of the Petroleum Rules, 1976 has been cancelled on the ground that the lease granted by the Petitioner expired and thereafter the Respondents did not have any title or right to continue over the leasehold land for storage of petroleum products.

3. In short, the relevant facts are that the Petitioner who is the owner of the land measuring 12629 sq. feet of plots No. 31 and 32 under Khata No. 540 and 544 respectively, Tauzi No. 229, Circle No. 249, Ward No. 34, holding No. 190/A at Boring Road, Patna on which the residential house also stands, leased out 8000 sq. feet out of the said land to Respondent No. 4 by a registered lease deed dated 1.6.1978 for a period of 15 years with effect from 1.6.1978 at a monthly rental of Rs. 1,000/- for the first ten years of lease and Rs. 1,200/- for the remaining five years of the lease period, which expired on 31.5.1993. However, on expiry of the lease, the matter regarding continuance of storage of petroleum products on the land in question was taken to Civil Court in two suits; one filed by Respondents No. 4 and 5 (M/s S.K. Puri Service Station, Boring Road, Patna, through its partner Respondent No. 4) and the other by the Petitioner, which are

still pending.

4. The suit filed by the Petitioner was for eviction and the Respondents in their suit claimed extension of lease by the Petitioner by virtue of bilateral unregistered document dated 2.9.1978 (Annexure 2). The Petitioner, however, by filing petition alleged interpolation in the said document incorporating about the right of renewal. The said petition came to this Court in Civil Revision No. 18/99 and it appears from the order passed by this Court in the said Civil Revision, contained in Annexure R/11, that the said petition alleging interpolation was withdrawn. Later, a review petition was filed bearing Civil Review No. 88/99 in which the review of the order (Annexure R/11) was sought for but the same was rejected on the ground that the Petitioner wanted to deviate from the admission made before this Court, which cannot be a ground for review. Thereafter the matter was taken to the Supreme Court in the petition for Special Leave to Appeal (Civil) No. 16513/2001 by the Petitioner, which was ultimately dismissed vide order dated 13.9.2002 (Annexure R/13). Further, it appears that in the suit filed by Respondent No. 4, a petition was filed by him (Plaintiff) wherein a prayer was made to restrain Defendant No. 1 (Petitioner herein) from putting any question challenging the genuineness of the agreement dated 2.9.1978. The Petitioner filed a rejoinder and the trial court rejected the said petition vide order, contained in Annexure 7, to the reply affidavit and the same stood affirmed by this Court vide order dated 23.9.2003 in Civil Revision No. 1178 of 2003 (Annexure 8). However, this Court directed for early disposal of eviction suit as well as the suit filed by Respondent No. 4 within six months.

5. In the meanwhile, on 31.10.2000 the Petitioner filed a petition before the District Magistrate, Patna for cancellation of "no objection certificate" under Rule (5) of the Petroleum Rules, 1976 which was granted under Rule 144 of the said Rules. The said petition was registered as Misc. Case No. 10/2000-2001. A copy of the said petition has been annexed as Annexure 3. On the said petition, the District Magistrate vide order dated 1.11.2000, contained in Annexure 5, issued notice to the Managing Partner of Respondent No. 5. Thereafter, he on hearing both sides, passed the order dated 15.12.2001 (part of Annexure 5) cancelling the "no objection certificate". Respondent No. 4 being aggrieved filled Misc. Appeal No. 8/2000 in which the order of the District Magistrate was set aside and the "no objection certificate" was maintained vide impugned order dated 8.10.2002 passed by the Commissioner, Patna Division (Respondent No. 2).

6. On 20th January, 2004, learned Counsel for the Petitioner submitted that this matter can be decided even without waiting for disposal of the suit on the simple question that even if there is no interpolation in the last clause of the unregistered document as alleged in the suit, whether such clause can create any right in the lessee under the original lease, which was a registered document.

7. According to the learned Counsel for the Petitioner, no addition could be made to the registered document in the facts and circumstances of the present case as, it is well settled that there could not be renewal of lease orally as renewal is a

fresh grant and it must be made by registered document.

8. Mr. Prasad, learned Counsel appearing for Respondents No. 4 and 5, on the other hand, submitted that the amended agreement has been acted upon and the respective parties are to only perform their part. As such, according to him, this Court sitting in the writ jurisdiction cannot interfere with such agreement.

9. Mr. Chatterjee, learned Counsel appearing for the Respondent-I.B.R Company (Respondent No. 6) submitted that it is a case which falls within the provisions, contained in Clause (v) of Sub-section (2) of Section 17 read with Section 49 of the Indian Registration Act, 1908 as by virtue of the amended clause only there is right to claim renewal and not that it automatically extended the tenure of the lease. He submitted that any document not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but, merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest is excluded from registration u/s 17(1) and, as such, there is no substance in the contention of the learned Counsel for the Petitioner that this matter can be decided without waiting for disposal of the suit. Further, according to him, learned Counsel for the Petitioner is not correct in his submission that this Court in the present writ petition can consider as to whether such clause can create any right in the lessee under the original lease which was, a registered document. In support of his said contention, Mr. Chatterjee has placed reliance on the decisions in the case of Kamal Singh and Others Vs. Kali Mahton and Others, in the case of Arumoorathi Chettiar Vs. Secondary Education Committee of Vallala Sangam of Vadugupatti, and in the case of V.B. Dharmyat (Deceased) through Lrs. Vs. Shree Jagadguru Tontadrya and Others,

10. Mr. Shahi, learned Counsel appearing for the Petitioner, on the other hand, has submitted that in view of the provisions contained in Section 50 of the Registration Act, registered document relating to the land is to take effect against unregistered document. He further submitted that even assuming that the subsequent document (so-called agreement) existed, the District Magistrate was legally justified in cancelling the no objection certificate under Rule 151 of the Petroleum Rules as the Respondents No. 4 and 5 ceased to have right to use the site for storing petroleum till the grant of renewal claimed under the aforesaid subsequent document. In support of this, he placed reliance on the decision of the Supreme Court in the case of Yogesh Kumar and others Vs. M/s. Bharat Petroleum Corpn. Ltd. and others, and also on the similar principle decided with respect to Cinemas (Regulation) Act and Rules by the Apex Court in the case of R.V. Bhupal Prasad Vs. State of Andhra Pradesh and others, He also placed reliance on a decision of the Orissa High Court in the case of Madanmohan Jena and Others Vs. Srinath Samal and Others, in support of his contention that a contract reduced to writing and registered, either voluntarily or as required by law, can be modified or rescinded only by a registered instrument and no

evidence of subsequent unregistered agreement to modify or rescind the contract is permissible.

11. There cannot be any doubt that a contract reduced to writing, either voluntarily or as required by law, can be modified or rescinded only by a registered instrument but, at the same time, I find force in the submission of Mr. Chatterjee, learned Counsel appearing for the I.B.P. Company that agreement to execute a lease of renewal does not require registration u/s 17(1)(c) of the Registration Act as it is not a document which effects an actual demise. The Division Bench of this Court in the case of Kamal Singh v. Kali Mahton (supra) held that it is only in the event of a new lease having been created that registration is necessary but where the compromise decree only amounted to varying the terms of the existing tenancy, and thus it created no new lease, there was no necessity for registration. The Supreme Court in the case of V.B. Dharmyat v. Shree Jagadguru Tontadrya (supra) also held that agreement to execute a lease does not require registration u/s 17(1)(c) as it is not a document which effects an actual demise.

12. So far as the reliance placed by Mr. Shahi on Section 50 of the Registration Act is concerned, I am unable to appreciate as to how the said provision helps him. Perhaps he has not taken notice of Sub-section (2) of Section 50 which provides that nothing in Sub-section (1) applies to leases exempted under the provisions of Sub-section (1) of Section 17 or to any document mentioned in Sub-section (2) of the same section, or to any registered document which had no priority under the law in force at the commencement of this Act.

13. Thus, the whole question depends upon as to whether the subsequent document (so-called agreement Annexure 2) as it stands created any right to use the site for storing petrol. It is only if this Court holds that the said document did not create any right to use the site for storing petrol that the cancellation of no objection certificate by the District Magistrate can be upheld, as has been held by the Supreme Court in the case of Yogesh Kumar v. Bharat Petroleum Corporation Ltd. (supra). In the case of R.V. Bhupal Prasad v. State of Andhra Pradesh (supra) the Supreme Court while considering the grant of renewal of licence held that the possession of a tenant at sufferance is protected till he is evicted in due course of law. But his possession is not legal nor lawful. In other words, his possession is unlawful or litigious possession and thus upheld the refusal to renew Cinema licence of the licensee who was holding the property after expiry of lease period as tenant at sufferance.

14. Subsequent document (so-called agreement), the scope of which is under consideration in the two suits, provides that "... if it is required to be renewed by the lessee, then the possession shall not be given" from which it can very well be held that since after the expiry of the original lease the possession of Respondents No. 4 and 5 over the land can be said to be of a tenant at sufferance which is protected till he is evicted in due course of law as has been held by the Apex Court in the case of R.V. Bhupal Prasad v. State of Andhra

Pradesh (supra).

15. It appears that the Petitioner prayed for injunction in Title Suit No. 382 of 1993, which has not been granted till date as stated in paragraph 25 of the counter affidavit filed on behalf of Respondents No. 4 and 5 which though in reply filed by the Petitioner is stated to be incorrect, but no order granting temporary injunction has been produced.

16. Moreover, in view of the fact that the matter is subjudice before the Civil Court and presently the Apex Court has stayed further proceedings of both the suits vide orders dated 28.11.2003 and 5.1.2004 while issuing notice to the Petitioner as stated in paragraph 19 of the counter affidavit, which is also admitted by the Petitioner in reply affidavit, I do not feel inclined to interfere with the impugned order of the Commissioner, Patna Division.

17. The writ application is, thus, dismissed, but without costs. However, it is made clear that any finding or observation made in this order shall not prejudice the case of respective parties in the two suits which are still pending in the trial court.