IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1837 of 2017
In
Civil Writ Jurisdiction Case No.2162 of 2013

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1. The State of Bihar
2. The Principal Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna.
3. The Commissioner, Purnea Division, Purnea.
4. The Collector, Purnea.
5. The Additional Collector, Purnea.
6. The Deputy Collector, Incharge-Khas Mahal, Purnea Collectorate, Purnea.

... ... Appellant/s

Versus

Sidharth Pratap,

... ... Respondent/s

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Appearance :
For the Appellant/s : Mr. Gyan Prakash Ojha, GA-7
Mr. Abhishek Singh, AC to GA-7
Mr.Ajit Kumar
For the Respondent/s : Mr.Gyanand Roy, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE ARUN KUMAR JHA)

Date : 12-05-2023

Heard learned counsel for the appellants and learned counsel for the respondent.

2. The present L.P.A. is directed against the order dated 21.03.2017 passed in CWJC No. 2162 of 2013 by the learned Single Judge of this Court whereby and whereunder the civil writ petition filed by the petitioner-respondent

herein has been allowed and the Collector, Purnea was directed to execute lease deed in favour of the writ petitioner in accordance with the rules within three months from the date of receipt/production of a copy of that order and furthermore, Memo No.2152 dated 15.10.2016 issued by the Additional Collector, Purnea was quashed.

3. Initially, in the writ petition, the petitioner-respondent herein had claimed the following reliefs :

> *"(i) For commanding the respondents to immediately execute the lease deed in favour of the petitioner in respect of Bihar Government Khas Mahal land of Ward No. 11(old), Municipal survey khata No.1, Municipal survey plot No. 115/621 (ka) (kha) (part), area 15 Kattha, i.e. 24 decimals and 7½ Karies situated within the Purnea Municipality (now Purnea Municipal Corporation, Purnea) for which the petitioner has already deposited the salami amount of Rs. 2,97,123.75 in Purnea Treasury through Treasury Challan on 12.03.2003 in accordance with the order of Collector, Purnea communicated to the petitioner by the Additional Collector by his Memo No. 184, dated 14.02.2003 (Annexure-3).*
> *(ii) For commanding the respondents to execute the lease deed in favour of the petitioner effective from the date of its execution.*
> *(iii) For holding that non-execution of lease deed in favour of the petitioner even after deposit of salami amount of Rs. 2.97,123.75 on 12.03.2003 is illegal, arbitrary, unjust and without any lawful justification.*
> *(iv) For grant of any such other relief or reliefs for which the petitioner is found to be*

entitled in the facts and circumstances of this case."

4. Thereafter, the petitioner filed an interlocutory application bearing I.A. No.8548 of 2016 for amendment in the writ petition by adding following relief in para 1 of the instant writ petition :

"For quashing the memo no. 2152 dated 15.10.2016, as contained in Annexure 9 to the present Interlocutory Application, issued under the signature of the Additional collector, Purnea, by which the petitioner has been asked to receive the amount of Rs. 2,97,124/- (Rs. Two Lakh Ninety Seven Thousand One Hundred Twenty Four) only from the District Nazarat/ District Revenue Section, Purnea, situated at Collector premises, Purnea. It is relevant to state here that the aforesaid amount was deposited by the petitioner in the Government Treasury, Purnea, as Salami amount as per the direction of the Additional Collector, Purnea, issued vide memo no. 184 dated 14.02.2003 for the settlement of the Khas Mahal Land on lease of Ward No. 11 (Old), Municipal Survey Khata No. 1, Municipal survey Plot No. 115/651 (ka), (kha) part area 15 Kathas i.e. 24 decimals and 7½ Karis situated within Purnea Municipality (Now Purnea Municipal corporation,

Purnea) in favour of the petitioner.”.

5. Brief facts of the case, as it appears from the record, are that one Narendra Narayan Ghosh, son of late Bhola Nath Ghosh was a lease holder of the Bihar Government Khas Mahal land of Ward No. 11 (old), Municipal Survey Khata No. 1, Municipal survey plot No. 115/621 (ka) (kha) (Part), area 15 Kattha, i.e. 24 decimals and 7½ Karies situated within the Purnea Municipality (now Purnea Municipal Corporation, Purnea) and the lease was executed in his favour on 23.08.1938 for 30 years. The said Narendra Narayan Ghosh sold the subject land to great grandfather of the writ petitioner namely, Vir Narayan Chand by a registered Sale Deed No. 4210 dated 24.07.1947 after receiving payment of consideration amount. After the death of said Vir Narayan Chand, father of the writ petitioner namely, Vijay Kumar Chand applied for renewal of lease in his favour, but unfortunately, before renewal of the lease, the father of the petitioner died on 24.11.1998. Thereafter, the petitioner being the only son of Late Vijay Kumar Chand pursued the matter further. Ultimately, the Additional Collector, Purnea by his letter No. 1122, dated 05.09.2002 informed the writ petitioner that the renewal of

lease of the land in question was not possible and he might apply for grant of fresh lease. In terms of the aforesaid letter dated 05.09.2002, the writ petitioner applied before the Additional Collector, Purnea on 18.09.2022 for grant of fresh lease in his favour in respect of the land in question clearly indicating that he was ready to abide by the rules and regulations relating to the settlement of Khas Mahal land. After due consideration of the application of the petitioner, the Additional Collector, Purnea by his Memo No. 184, dated 14.02.2003 informed the writ petitioner that lease settlement of Bihar Government Khas Mahal land of Ward No. 11 (old), Municipal survey khata No. 1. Municipal survey plot No. 115/621 (ka) (kha) (Part), area 15 Kattha, i.e. 24 decimals and 7½ Karies situated within the Purnea Municipality was being made with him and as per the order of the Collector, Purnea, he had to deposit salami amount of Rs. 2,97,123.75 through treasury challan in Government treasury within a fortnight and after depositing the said amount, copy of the challan showing deposit of the aforesaid amount should be submitted in the office. Pursuant to the aforesaid direction of the Collector, Purnea communicated to the petitioner by the Additional Collector,

Purnea by his Memo No. 184, dated 14.02.2003, the writ petitioner deposited a sum of Rs. 2,97.123.75 in Government Treasury through challan on 12.03.2003 and submitted a copy of the challan in the office immediately thereafter. But even after depositing the aforesaid amount, no deed of lease was executed by the competent authority in favour of the petitioner though he made several representations before the competent authority. Thereafter, the petitioner filed CWJC No. 2162 of 2013, which was allowed by the learned Single Judge vide order dated 21.03.2017. Being aggrieved by the order of learned Single Judge, the State of Bihar filed the present LPA.

6. The learned counsel for the appellants-State submitted that the learned single Judge has failed to appreciate the fact that the original lease holder had no right to transfer the land in question in favour of the great grandfather of the respondent and the status of ancestor of the respondent on the land in question was that of a trespasser. The learned single Judge also failed to appreciate that the land in question is a land of Khas Mahal Estate of Bihar and any transfer without the permission of the Collector would be illegal. The learned Single Judge failed

to appreciate that the deed, which was executed in the year 1949 by the original lessee Narendra Nath Ghosh in favour of Late Bir Narayan Chandra was *void ab initio*. Thus, his status was that of a trespasser on the said land. The learned counsel further submitted that under the provisions of the Bihar Government Estate (Khas Mahal) Manual, 1953 and the Rules framed thereunder for grant of lease, the lessee is required to apply for renewal of his lease three months prior to its expiry. If without applying for fresh lease, the lessee continues in possession then he shall be deemed to be a trespasser and the arrears of land shall be recovered from him with penalty. Since the State Government did not renew the lease, it continued to hold the land until the land is leased to another person by auction. The learned counsel for the appellants further submitted that Title Suit No.40 of 1982 has been filed by the State of Bihar against the great grandfather of the writ petitioner seeking the relief of eviction against him from the plot in question but the said suit was dismissed in default in the year 1988. Even the application filed for its restoration was dismissed. The State of Bihar did not pursue the matter any further and left it as such. The learned counsel further submitted that since the

dismissal of the suit of the State was in default and it was not decided on merits, for this reason, it is not a decree under the provisions of Section 2 (2) (b) of the Code of Civil Procedure and does not confer any right to any party. The writ petitioner-respondent could not get any title or interest in the property in question due to dismissal of the suit of the State. Moreover, only the Collector of the district is empowered to process the renewal of lease for alienation of the land under certain conditions under the Bihar Government Estates Khas Mahal Manual. But no approval was taken in the year 1949 when the original lessee transferred the land to the great grandfather of the writ petitioner-respondent. On the basis of the aforesaid submissions, learned counsel for the appellants submitted that the order impugned dated 21.03.2017 passed by the learned single Judge cannot be sustained in the eyes of law.

7. On the other hand, the learned counsel for the respondent submitted that a huge amount of Rs. 2,97,123.75 deposited by the petitioner as salami amount for execution of lease deed in his favour in respect of land in question has been lying idle with the appellants for about 20 years and because of non-execution of the lease deed, the petitioner

has not been able to do anything over the land in question so as to utilize the same for any benefit. The learned counsel further submitted that the impugned inaction on the part of the respondents in executing the lease deed in favour of the petitioner in respect of land in question is illegal, void and without any lawful justification, which is based on wrong assumption of facts and extraneous and irrelevant consideration. The learned counsel for the respondent further submitted that the State has lost its title suit way back in the year 1988 and, thereafter, the application for its restoration was also dismissed. The State did not pursue the matter further and left the matter as such and hence, the status of the writ petitioner-respondent could not be that of a trespasser. Moreover, the authorities themselves asked the writ petitioner-respondent to come forward to enter into a fresh lease and, accordingly, the writ petitioner-respondent deposited the amount of Rs.2,97,123.75 on 12.03.2003. The learned counsel also submitted that it is just and expedient in the interest of justice that this Court may direct the appellant authorities to immediately execute lease deed in favour of the petitioner in respect of the land in question effective from the date of its execution.

8. Having considered the materials available on record and further considering the rival submission, the basic issue which arises in the case is as to whether the learned Single Judge rightly directed the authority namely, the Collector, Purnea to execute lease deed in favour of the writ petitioner-respondent in accordance with the rules while quashing the Memo No.2152 dated 15.10.2016 issued by the Additional Collector, Purnea.

9. Undisputed facts of this case is that one Narendra Nath Ghosh got a lease of Plot No.115/621 (Ka) (kha) (Part) from the government on 23.08.1938 which he subsequently transferred to the great grandfather of the petitioner-respondent vide registered sale deed dated 24.07.1947. Thereafter, the transferee and his family continued in the possession. The father of the writ petitioner applied for renewal of the lease deed which was not renewed in his favour and after his death, the writ petitioner applied for renewal of lease in his favour which was turned down vide letter no.644 dated 15.04.1999 issued by the Commissioner and the Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna. Thereafter, the writ petitioner received a proposal that if he

was interested to enter into the new lease on new terms and conditions, he might given his consent. The writ petitioner agreed and he was asked by the competent authority to deposit Rs.2,97,123.75 as salami amount in Purnea Treasury which the writ petitioner deposited on 12.03.2003. But no deed of lease was executed by the competent authority rather the Additional Collector, Purnea issued Memo No.2152 dated 15.10.2016 asking the writ petitioner to withdraw his deposited amount.

10. Undoubtedly, the writ petitioner-respondent is claiming right over the land on the basis of sale deed which was executed by the lessee of the government namely, Narendra Nath Ghosh in the year 1947 to the great grandfather of the writ petitioner, but Rule 17 read with Part II of Appendix A (1) of Bihar Government Estates (Khas Mahal) Manual, 1953, General Form of Lease for Town Khasmahals, *inter alia* provide as follows :-

> *"17...Special forms of lease have been prescribed for certain areas (vide Appendix-A) which should invariably be followed in those areas. Elsewhere the general form as given in Appendix A (1) should be used, subject to such modification as may be approved in each*

case or class of cases by the Commissioner, who should refer freely for the orders of the State Government in cases of doubt. All these leases should be registered formally".

Part II-*Terms and conditions*

1.xxxx
2. Except with the previous sanction of the Collector/Deputy Commissioner in writing and on payment of a fee equal to 25 per cent of the yearly rental (provided that no such fee shall be less than Rupee 1 or more than Rupees 100), the lessee shall not transfer, assign, sublet or part with the possession of the said demised land and premises or any part thereof".
3. xxxx
4. xxxx
5.xxxx
6.xxxx
7.xxxx
8.xxxx
9.xxxx
10.xxxx
11.xxxx
12.xxxx
13. In the event of any breach or infringement of any of the conditions aforesaid the lessee shall, in addition and without prejudice to any other remedy of the lessor, be liable to a fine by way of liquidated damages a sum not exceeding Rs. 250 [to be imposed by Collector/Deputy Commissioner],
[14. If three months prior to the expiration of the said term the lessee shall notify the

Collector/Deputy Commissioner that he is desirous of taking a new lease of the said premises and shall have duly observed and performed all the terms and conditions of this lease he shall on the expiry of the terms of this lease be entitled to an unlimited option of renewal of the lease of the said premises at an interval of every 30 years on the express condition that Government shall have the full right to increase the rate of rent not exceeding double the amount of the previous rent at every renewals but otherwise on the said terms and conditions and subject to the same covenants and agreements, including this covenant for renewal as are contained in this lease in the event of the lessee not taking a new lease as aforesaid on the expiry of the period of 30 years, the lessee shall not be entitled to any compensation for any buildings structures or improvements erected or made by him upon the said premises, nor shall be entitled to dismantle or remove any such buildings or structures and the Collector/Deputy Commissioner may re-enter on the said premises and take possession of the lands, buildings and structures which shall thereupon vest absolutely in the lessor. But if the lessee wants the lease to be renewed it would be renewed provided of course he had fulfilled the terms and conditions of the lease and was prepared to pay if so desired by Government higher rent within the limit specified above.

> *If, however, Government wants to resume the land under clause 10 of the lease, they would have to pay compensation to the lessee as provided for under that clause".*

11. A bare perusal of the General Form of Lease shows that the lessee could not have transferred or sold the land in absence of specific written approval of the Collector of the district concerned. However, there was no privity of contract between the petitioner and the appellate authority to confer any right on him. On the ground of clear provision of law, the transfer to the great grandfather of the writ petitioner of the land concerned by an instrument of sale was *void ab initio*. Therefore, the writ petitioner could not get any title or right over the land in question.

12. Moreover, there was no renewal of the land in favour of either the grandfather or father or the writ petitioner by the State Government. So whatever be the contention of the writ petitioner, he remained as a trespasser and this fact is fortified by the attempts of the writ petitioner to get the lease of the land renewed in his favour. In any case, even if the original lease could have continued, it would have come to an end in the year 1967.

13. Further, the land in question belongs to the

State Government and Article 39 (b) of the Constitution of India provides as follows :

> *"39 (b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good".*

14. Plain reading of the aforesaid Article makes it amply clear that natural resources belong to the people and the State has been holding it on behalf of people. The land in question is also a natural resource and being a public property belonging to the people, the State is not allowed to hand over this resources as the State Largesse to its handpicked persons in violation of the Article 14 and Article 39 (b) of the Constitution of India. If the said land is to be settled, it would be only after giving opportunity to others as well as keeping in the mandate of Article 39 (b) of the Constitution of India in mind. If the State Largesse is to be given then it ought to be by way of a notice to general public and not in surreptitious manner. The Hon'ble Apex Court in the case of ***Common Cause, a Registered Society Vs. Union of India and Others***, reported in ***(1996) 6 SCC 530***, in paragraphs 24 & 26 held as under :

> ***"24.*** *The orders of the Minister reproduced above read: "the applicant has no regular*

income to support herself and her family", "the applicant is an educated lady and belongs to Scheduled Tribe community", "the applicant is unemployed and has no regular source of income", "the applicant is an uneducated, unemployed Scheduled Tribe youth without regular source of livelihood", "the applicant is a housewife whose family is facing difficult financial circumstances" etc. etc. There would be literally millions of people in the country having these circumstances or worse. There is no justification whatsoever to pick up these persons except that they happen to have won the favour of the Minister on mala fide considerations. None of these cases fall within the categories placed before this Court in Centre for Public Interest Litigation v. Union of India [1995 Supp (3) SCC 382] but even if we assume for argument sake that these cases fall in some of those or similar guidelines the exercise of discretion was wholly arbitrary. Such a discretionary power which is capable of being exercised arbitrarily is not permitted by Article 14 of the Constitution of India. While Article 14 permits a reasonable classification having a rational nexus to the objective sought to be achieved, it does not permit the power to pick and choose arbitrarily out of several persons falling in the same category. A transparent and objective criteria/procedure has to be evolved so that the choice among the members belonging to

the same class or category is based on reason, fair play and non-arbitrariness. It is essential to lay down as a matter of policy as to how preferences would be assigned between two persons falling in the same category. If there are two eminent sportsmen in distress and only one petrol pump is available, there should be clear, transparent and objective criteria/procedure to indicate who out of the two is to be preferred. Lack of transparency in the system promotes nepotism and arbitrariness. It is absolutely essential that the entire system should be transparent right from the stage of calling for the applications up to the stage of passing the orders of allotment. The names of the allottees, the orders and the reasons for allotment should be available for public knowledge and scrutiny. Mr Shanti Bhushan has suggested that the petrol pumps, agencies etc. may be allotted by public auction — categorywise amongst the eligible and objectively selected applicants. We do not wish to impose any procedure on the Government. It is a matter of policy for the Government to lay down. We, however, direct that any procedure laid down by the Government must be transparent, just, fair and non-arbitrary.

26. *This Court as back as in 1979 in Ramana Shetty case [(1979) 3 SCC 489] held "it must, therefore, be taken to be the law…" that even in the matter of grant of largesses including award of jobs, contracts, quotas and licences,*

the Government must act in fair and just manner and any arbitrary distribution of wealth would violate the law of the land. Mr Satish Sharma has acted in utter violation of the law laid down by this Court and has also infracted Article 14 of the Constitution of India. As already stated a Minister in the Central Government is in a position of a trustee in respect of the public property under his charge and discretion. The petrol pumps/gas agencies are a kind of wealth which the Government must distribute in a bona fide manner and in conformity with law. Capt. Satish Sharma has betrayed the trust reposed in him by the people under the Constitution. It is high time that the public servants should be held personally responsible for their mala fide acts in the discharge of their functions as public servants. This Court in Lucknow Development Authority v. M.K. Gupta [(1994) 1 SCC 243] , approved "Misfeasance in public offices" as a part of the Law of Tort. Public servants may be liable in damages for malicious, deliberate or injurious wrongdoing. According to Wade:

"There is, thus, a tort which has been called misfeasance in public office and which includes malicious abuse of power, deliberate maladministration, and perhaps also other unlawful acts causing injury."

With the change in socio-economic outlook, the public servants are being

> *entrusted with more and more discretionary powers even in the field of distribution of government wealth in various forms. We take it to be perfectly clear, that if a public servant abuses his office either by an act of omission or commission, and the consequence of that is injury to an individual or loss of public property, an action may be maintained against such public servant. No public servant can say "you may set aside an order on the ground of mala fide but you cannot hold me personally liable". No public servant can arrogate to himself the power to act in a manner which is arbitrary".*

15. The Hon'ble Apex Court in the case of ***Association of Unified Tele Services Providers and others Vs. Union of India and others***, reported in ***(2014) 6 SCC 110***, in paragraph 23, held as under :

> ***"23.*** *We will, before examining the various contentions raised by the learned Senior Counsel for the appellant and ASG on the scope of Article 149of the Constitution, Section 16 of the 1971 Act, Rule 5 of the 2002 Rules, etc., examine the various clauses in the UAS Licence Agreement. As already indicated, the Licence Agreement specifically refers to Section 4 of the Telegraph Act, 1885, which highlights the fact that the Central Government enjoys an "exclusive privilege" so far as "spectrum" is concerned, which is a*

> *scarce, finite and renewable natural resource which has got intrinsic utility to mankind. Spectrum, as already indicated, is a natural resource which belongs to the people, and the State, its instrumentalities or the licensee, as the case may be, who deal with the same, hold it on behalf of the people and are accountable to the people.*

16. The reading of the aforesaid decisions leave no doubt in the mind that the State authorities cannot renew the lease of the writ petitioner in violation of the provisions of the Constitution of India as discussed here-in-above. They are under bounden duty to follow the due procedure with regard to the settlement of lease which they hold as trustees of property of the people. At the same time, we do not find any merit in the submission of the learned counsel for the respondent regarding dismissal of the suit of the State of Bihar for eviction of the great grandfather of the writ petitioner from the land in question since it was a dismissal in default and Section 2 (2 (b) of the Code of Civil Procedure, 1908 makes it amply clear that it would not come under the meaning of a decree. So, such dismissal would not vest any right to the writ petitioner.

17. In the light of aforesaid discussions, we have no

hesitation in holding that the learned Single Judge erred while allowing the writ petition of the petitioner and hence, the judgment dated 21.03.2017 of the learned Single Judge passed in CWJC No.2162 of 2013 is set aside and the writ petition is dismissed.

18. Accordingly, the present LPA stands allowed.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

V.K.Pandey/-

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