

Salim Lari and anr. Vs. the State of Bihar and ors.

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Court : Patna

Decided On : May-03-2005

Judge : V.N. Sinha, J.

Acts : [Constitution of India](#) - Article 14

Appeal No. : CWJC No. 1476 of 2005

Appellant : Salim Lari and anr.

Respondent : The State of Bihar and ors.

Advocate for Def. : Shailesh Kumar Sharma Adv. for the respondent No. 6 and J.D. Singh, G.P. 1

Advocate for Pet/Ap. : Kishore Kumar Thakur, Adv.

Disposition : Application allowed

Judgement :

V.N. Sinha, J.

1. During the pendency of this writ application, Smt. Sheela Devi has been allotted the shop in question by the District Magistrate, Sitamarhi under Letter No. 95 dated 2.2.2005, Annexure-14 and thereafter I.A. No. 613 of 2005 was filed to implead her as party Respondent in this writ application. Let Smt, Sheela Devi,

wife of Shankar Sah be impleaded as party Respondent No. 6.

2. Shri Shailesh Kumar Sharma appears on her behalf and for that purpose he has already filed vakalatnama.

Heard learned counsel for the petitioners, State and the private Respondent No. 6

The two petitioners have assailed the directions of the Collector, Sitamarhi contained in his Letter No. 1506 dated 26.10.2004, Annexure-1, whereunder he has instructed the Circle Officer, Riga to lodge a First Information Report against the two petitioners and thereafter to take forcible possession of the shop in question from them.

3. Petitioners assail the aforesaid instructions on the ground that the said instructions are not only arbitrary and violative of Article 14 of the Constitution but also have been issued contrary to the provisions contained in Rules 21 and 22 of the Khas Mahal Manual. They contend that the lands in question being the Khas Mahal lands were given to Sri Radha Krishna Goenka College by the Collector, Muzaffarpur under Letter dated 10.9.1947 in compliance of the instructions of the State Government contained in Letter No. 7049 dated 5.8.1947, Annexure-A. The College authorities raised a few shops over the lands in question and let out to the various persons, including petitioner No. 1. The shop let out to Petitioner No. 1 bears the number 105/86-87. Petitioner No. 1 inducted petitioner No. 2 as partner in his shop business. While the petitioners continued with their business activities in the shop, petitioner Nos. 1 and 2 under their letter dated 26.3.2003, Annexure-3 informed the Collector that petitioner No. 2 has already been inducted as a partner in the shop business and petitioner No. 1 desires to walk out of the business and the shop in question should be treated to be settled with petitioner No. 2. The contents of the two letters were supported by Affidavit. While the request letter of petitioners, Annexure-3 remained pending, the Collector issued the impugned notice dated 26.10.2004, Annexure-1 whereunder he held that transfer of shop by Petitioner No. 1 to Petitioner No. 2 without obtaining permission of the authorities was illegal and then directed the Circle Officer, Riga to register a First Information Report against the two petitioners as also to take forcible possession of the shop in question. Petitioners have challenged the said notice on the ground that once

the shop in question was let out to them by the lessee of the lands in question the authorities cannot take forcible possession of the shop in question in the manner in which they want to take the possession of the shop in question. According to the petitioners, if the authorities are of the view that the provisions of Khas Mahal Manual has been violated by the two petitioners or in any case by petitioner No. 1 then they should file a civil suit for securing possession of shop in question on the ground of violation of the provisions of the Khas Mahal Manual and the authorities just cannot walk into the shop premises and take forcible possession thereof.

4. On the other land, counsel for the State Respondents as also the private Respondent No. 6 submitted that perusal of letter dated 26.3.2003, Annexure-3 of the petitioners would itself indicate that petitioner No. 2 was inducted as partner when the shop was let out to petitioner No. 1 in the year 1985 and then petitioner No. 2 was hardly nine years of age and could not have been inducted as managing partner in the shop business. They further contend that petitioner No. 1 on his own showing having walked out of the shop business, has no right to continue in the business as also to file this application and the authorities have rightly issued notice, Annexure-1 calling upon the two petitioners to vacate the shop premises and in the event they fail to vacate the shop premises then to lodge a First Information Report and to take forcible possession thereof.

5. Having heard the parties and having perused the provisions of Khas Mahal Manual especially the provisions contained in Rules 21 and 22 of the said Manual, I am satisfied that the notice, Annexure-1 taking forcible possession of the shop in question cannot be upheld and that has got to be quashed, which is accordingly quashed, however, with liberty to the authorities to file a civil suit for taking possession of the shop in question on the ground of violation of the provisions of the Khas Mahal Manual by the lessee College or the tenant petitioners. This application is, accordingly, allowed. No costs.

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