

## Rehana Bano - Petitioner @HASH State of Jharkhand

**Court:** JHARKHAND HIGH COURT

**Date of Decision:** July 28, 2016

**Citation:** (2017) 2 AIRJharR 180 : (2016) 4 JBCJ 356 : (2016) 4 JCR 815 : (2016) 4 JLJR 682

**Hon'ble Judges:** Aparesh Kumar Singh, J.

**Bench:** Single Bench

**Advocate:** Mr. Bhaiya V. Kumar, Advocate, for the Petitioners; J.C. to S.C. (L and C), for the State

**Final Decision:** Disposed Off

### Judgement

Mr. Aparesh Kumar Singh, J. - Heard learned counsel for the parties.

2. Original petitioner and the private respondent, both of whom are now substituted, have been fighting over an issue relating to alleged

encroachment of 332 sq.ft. of land on the part of the petitioner of the leasehold land of the private respondent. B.P.L.E. proceedings in that

connection were initiated in Case No. 01/1985-86 before the learned Land Reforms Deputy Collector, Chaibasa Sadar who decided the matter

on 29th April, 1986 after hearing both the parties holding that the ancestors of the present petitioner leaseholder of Holding No. 579, Plot no.925

of Chaibasa Town if are encroaching over the matter beyond the leasehold area, they are obliged to remove the same. Circle Officer was directed

to conduct a measurement of the leasehold area in question. The original applicant in BPLE Case No. 01/1985-86 Md. Maniruddin was claiming

leasehold right over Plot No. 925 through his grandmother. The opposite parties ancestors of the private respondent were claiming leasehold right

over Plot No. 923-924 in the name of Julua Khatoon. Order of the Land Reforms Deputy Collector dated 29th April, 1986 (Annexure-1) was

made subject matter of the challenge by Md. Maniruddin in BPLE Appeal No. 44/1986-87 before the Deputy Commissioner, West Singhbhum,

Chaibasa who, again on consideration of the rival pleas of both the parties, upheld the order and directed removal of encroachment by a particular

date. The appellate order and the notice of the Circle Officer, Chaibasa dated 18th May, 2006 are impugned by the petitioner.

3. Respondents-State filed their counter affidavit supporting the impugned order while the private respondents have appeared through their counsel

and defended the impugned order through their counsel.

4. Learned counsel for the petitioner has relied upon a judgment rendered by the learned Single Judge of Patna High Court reported in 2000(2)

PLJR 221 in the case of Ashwani Kumar Gupta v. The State of Bihar & Ors. to submit that BPLE proceeding is not maintainable as there

are separate provisions under the Khas Mahal Manual in respect thereof.

5. Learned counsel for the private respondent submits that the proceedings are not in connection with the resumption of leasehold land as per the

Khas Mahal Manual, referred to in the judgment relied upon by the petitioner. It was only on a question of encroachment by the petitioner on the

leasehold area of the private respondent that a direction to demarcate the same and remove any encroachment was passed.

Petitioner should therefore not have any grievance if on fair measurement through a Circle Amin in presence of the parties it is found that he has

encroached on area beyond his leasehold area and belonging to the private respondents or any other person. It is submitted that the petitioner in no

way claims any right over any area beyond his leasehold property. Therefore, no interference may be required in the matter as the effective

direction passed by the authorities in the aforesaid proceedings do not lead to any injustice to the parties.

6. I have considered the submissions of the parties and gone through the relevant materials on records and perused the impugned order. On

consideration of the merits of the order impugned, it appears that the issue involved was only whether the petitioner was in encroachment over an

area beyond his leasehold land. It is not the case of the petitioner either that he is entitled to claim an area beyond its leasehold area. The lease of

such Khas Mahal properties are executed through the Deputy Commissioner or his delegate under the supervision of Land Reforms and Revenue

Department of the State. In that capacity also the Deputy Commissioner on being apprised of the violation of the terms and conditions of the lease

may in exercise of his powers as the authority under the Khas Mahal Manual direct such measurement to be undertaken in order to ascertain any

encroachment over the leasehold area by any party.

7. In that view of the matter the direction issued in the impugned order being challenged on the question that the Khas Mahal land is not in the

category of public land need no interference as such an exercise can be undertaken by the Deputy Commissioner in respect of leasehold land in

question. Rule 18 Chapter II of Bihar Government Estates (Khas Mahal) Manual, 1953 reads as under :-

18. Encroachments on unsettled lands - Some member or members of the District Officer's staff should be made, and held, specially

responsible for seeing that no encroachments are made on unsettled lands in such areas and that no buildings are erected without permission in

contravention of the sanction accorded by the District Officer. The District Officer shall cause an annual certificate to be given by the Deputy

Collector in charge of khasmahals that all holdings of the khasmahal have been inspected by the prescribed officers and that he himself has

personally inspected the boundaries and condition of a percentage of the tenancies to be prescribed by the Collector.

8. It is another matter that on such demarcation of the leasehold area and/or any encroachment being found thereafter the legal recourse available

to be taken are to be worked out in accordance with law.

9. This Court is, therefore, satisfied that no interference is required in the impugned orders. However, the Deputy Commissioner, West Singhbhum

would act in accordance with law in view of the observation made herein above. Parties would cooperate in any such exercise. Writ petition is

accordingly disposed of.