

## Kameshwar Prasad Jaiswal Vs The State of Bihar and Others

**Court:** Patna High Court

**Date of Decision:** July 25, 2011

**Acts Referred:** Constitution of India, 1950 " Article 226

**Hon'ble Judges:** R.M. Doshit, C.J; Birendra Pd. Verma, J

**Bench:** Division Bench

**Final Decision:** Allowed

### Judgement

@JUDGMENTTAG-ORDER

Hon"ble R.M. Doshit, C.J.

With the consent of the learned Advocates, this petition is heard and decided today. This petition under Article

226 of the Constitution is filed by one Kameshwar Prasad Jaiswal, owner of the disputed property situated at Ward No. 62, Circle No. 161,

Holding No. 165 at Shikarpur Nalapar, Chowk, Patna City, District-Patna (hereinafter referred to as "the said premises"). The Petitioner has

approached this Court against the Respondent authority for a direction to quash and set aside the licence for country liquor shop granted in favour

of the Respondent No. 5 for the year 2011-12 in respect of the said premises.

2. The Petitioner admits that the said premises was leased by him to the Respondent No. 5 for running a country liquor shop for the licensing year

2009-2010 (i.e. from 1st April, 2009 to 31st March, 2010). Since 1st April, 2010, he did not give the said premises to the Respondent No. 5 for

running a country liquor shop for the licensing year 2010-11.

3. Nevertheless, the Respondent No. 5 posing himself to be the owner of the said premises executed a lease deed in favour of one Satendra

Kumar for running a country liquor shop in the said premises. On the strength of the said lease deed made on 20th March, 2010 the said Satendra

Kumar was given licence for running a country liquor shop in the said premises for the licensing year 2010-11. The Petitioner objected to the

licence given to the said Satendra Kumar before the Respondent authorities, before this Court, before the Excise Commissioner and before the

Board of Revenue. By the time the matter was decided by the Board of Revenue on 5th April, 2011 the licence had expired. The Board of

Revenue held that the matter had become in fructuous. However, the Board of Revenue did not approve the order of Commissioner of Excise

dated 7th February, 2011. The Board of Revenue observed, ""in the case of disputed premises being offered as location of shop in 2011-12, the

authorities will make their enquiries regarding its suitability, and give approval, with an open mind without feeling constrained by the order dated 7th

February, 2011 of the learned Commissioner"".

4. Under apprehension that the Respondent No. 5 will use the said premises for running a country liquor shop for the year 2011-12, the Petitioner

lodged his objection with respect to the said premises before the Assistant Commissioner of Excise as early as on 12th March, 2011.

Nevertheless, on the strength of the lease deed produced by the Respondent No. 5 purportedly executed by the Petitioner in favour of the

Respondent No. 5 on 12th December, 2009 for the period from 19th August, 2009 to 1st July, 2012, the Respondent No. 5 has been granted

licence for running a country liquor shop in the said premises for the year 2011-12.

5. Feeling aggrieved, the Petitioner has filed the present petition.

6. Learned Advocate Mr. Jitendra Singh has appeared for the Petitioner. He has taken us through the aforesaid record and the previous history of

litigation. He has expressed the anguish felt by the Petitioner that in spite of being vigilant his efforts till date have gone in vain.

7. Learned Advocate Mr. Vikas Kumar has appeared for the Respondent authorities. He has submitted that the petition involves disputed

questions of fact. The dispute is of the civil nature. Therefore, this Court will not entertain the petition filed under Article 226 of the Constitution. He

has also relied upon the lease deed dated 12th December, 2009 on the strength of which the licence has been granted to the Respondent No. 5 for

the year 2011-2012.

8. Learned Advocate Mr. S.D. Yadav has appeared for the Respondent No. 5. He has submitted that on 30th March, 2009 the Petitioner had

executed a lease deed in respect of the said premises for the period from 1st April, 2009 to 31st March, 2010. Under the said lease deed the

Petitioner had agreed that the lease would be renewed after expiry of the lease period. He has submitted that during subsistence of the lease deed

dated 30th March, 2009 the Petitioner had executed another lease deed on 12th December, 2009 (Annexure-A-1 to the counter affidavit). Under

the said lease the Petitioner let out the said premises to the Respondent No. 5 for a monthly rent of Rs. 8,000/-, on a further condition that the

Respondent No. 5 would pay Rs. 1,00,000/- in advance. Under the said lease the Respondent No. 5 was also allowed to sublet the said

premises. Pursuant to the said agreement Respondent No. 5 made a sub-lease on 20th March, 2010 in favour of the aforementioned Satendra

Kumar for running a country liquor shop for the licensing year 2010-2011 [i.e. from 1st April, 2010 to 31st March, 2011]. He has submitted that

the Respondent authority has granted licence to the Respondent No. 5 for running a country liquor shop for the year 2011-2012 in the said

premises. He has next contended that the Petitioner has an alternative statutory remedy of appeal before the Commissioner of Excise. The petition

involves disputed questions of fact. Therefore also, the petition under Article 226 of the Constitution should not be entertained.

9. We are alive to the fact that the Petitioner has an alternative remedy of appeal before the Commissioner of Excise. However, on the facts of the

present case and in view of the previous litigation, we are not inclined to relegate the Petitioner to the alternative remedy.

10. We have three lease deeds before us in respect of the said premises. The first one was admittedly executed by the Petitioner on 30th March,

2009 for the licensing year 2009-2010. The second lease deed purportedly executed by the Petitioner on 12th December, 2009 for the period

19th August, 2009 to 1st July, 2010 is the disputed lease deed. Ex facie, the said lease deed is not reliable. The said lease deed has been

purportedly executed on 12th December, 2009 during subsistence of the first lease deed. The said lease deed was executed for the period from

19th August, 2009 to 1st July, 2012 i.e. part of the lease period was already covered by the admitted lease deed of. 30th March, 2009. Under the

said lease the Respondent No. 5 agreed to pay a monthly rent of Rs. 8,000/- although under the admitted lease deed he had agreed to pay

monthly rent of Rs. 5,000/-. Meaning thereby for the period from 19th August, 2009 till 31st March, 2010; though the Respondent No. 5 had

agreed to pay monthly rent of Rs. 5,000/-, under the disputed lease deed he agreed to pay the enhanced rent of Rs. 8,000/-. Moreover, a material

discrepancy in respect of the signature of the Petitioner is noticeable. We have before us two admitted signatures of the Petitioner; one on the writ

petition and the other on the admitted lease deed dated 30th March, 2009. Both the signatures are evidently in the same hand. The purported

signature of the Petitioner on the disputed lease deed of 12th December, 2009 is ex-facie not made by the person swearing the affidavit on this

petition and the person who signed admitted lease deed dated 30th March, 2009. Moreover, the Respondent No. 5 has not asserted nor

produced any material to establish that in compliance with the terms agreed under the said lease deed he had paid the advance or the monthly rent

of Rs. 8,000/- to the Petitioner. We are, therefore, constrained to hold that the lease deed dated 12th December, 2009 relied upon by the

Respondent No. 5 is a forged document. On the basis of the said lease deed, oblivious to the objection lodged by the Petitioner as early as on

20th March, 2011, oblivious to the observation made by the Board of Revenue, the Respondent authorities have illegally granted licence to the

Respondent No. 5 for running a country liquor shop in the said premises for the year 2011-2012. The third lease deed is of 20th March, 2010,

executed by the Respondent No. 5 posing himself as the owner of the said premises in favour of the aforesaid Satendra Kumar. The said lease has

no relevance for the purpose of the present petition except that the said lease was made by the Respondent No. 5 illegally on the strength of the

forged lease deed dated 12th December, 2009.

11. We are of the view, that the Respondent authorities have allowed the Respondent No. 5 to run a country liquor shop in the said premises on

extraneous consideration. The order made by the Respondent authorities in collusion with Respondent No. 5 cannot be sustained for a day, nor

the Petitioner can be relegated to the alternative remedy where a glaring wrong has been committed by the Respondent authorities in collusion with

the Respondent No. 5.

12. For the aforesaid reasons, we allow the writ petition. The licence dated 14th April, 2011 granted to the Respondent No. 5 Ashok Kumar Sah

for running a country liquor shop in the said premises is quashed and set aside. The Respondent No. 5 will close the said country liquor shop

forthwith. He will handover the vacant possession of the said premises to the Petitioner within one week from today. The Respondent No. 5 will

pay rent of Rs. 8,000/- per month to the Petitioner for the period from 1st April, 2010 till the date he hands over the vacant possession of the said

premises to the Petitioner.

13. The Respondent No. 5 will bear the cost of the Petitioner. The cost is quantified at Rs. 5,000/-. The Respondents will bear their own cost.

Registry will send the writ forthwith.