

(1975) 01 PAT CK 0001

In the Patna High Court

Case No : Civil Writ Jurdn. Case No. 1133 of 1973

Abanindra Nath Das

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 16-01-1975

Acts Referred:

Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947 — Section 11(2)

Citation : AIR 1976 Patna 22 : (1975) 9 PLJR 106 : (1975) PLJR 106

Hon'ble Judges : Shambhu Pd. Singh, J;Lalit Mohan Sharma, J

Bench : Division Bench

Advocate : B.C. Ghose and P.K. Sinha, for the Appellant; K.P. Verma, Government Advocate, G.P. Jaiswal, Jr. to Govt. Advocate and Shambhu Saran for Income Tax Department, for the Respondent

Final Decision : Allowed

Judgement

1. By this application under Articles 226 and 227 of the Constitution of India, the petitioner prays for quashing an order of the District Magistrate of Saran (Respondent No. 2) dated the 22nd May, 1973 (Annexure "6"), massed under the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947 (hereinafter referred to as the Act). The facts leading to the passing of that order and the filing of this application before this Court may briefly be stated. On the 1st April, 1941, the petitioner leased his house situate in the town of Chapra to the Union of India for use of the Commissioner of Income Tax, for office purposes. The lease was for three years only and it was again renewed from time to time till the year 1972. The Office of the Income Tax Department was located in the building.

On the 17th December, 1972, the office was shifted to another place, and this fact was communicated to the petitioner on the 18th December, 1972. The Income Tax Department also started vacating the premises from that date and vacated the same completely on the 5th February, 1973. The Department stopped payment of rent from August, 1972, and there was some communication between the petitioner and the Department with regard to that and it appears,

ultimately, the Department has paid the rent for the period from August, 1972, till the 5th February, 1973. On the 13th February, 1973, Respondent No. 2 allotted the house to the Executive Engineer. Buildings Division, Public Works Department (Vide Annexure "3"). On the 26th February, 1973, some persons on behalf of the Executive Engineer (Respondent No. 3) forcibly opened the lock of the house and occupied it. On the 6th of March, 1973, the petitioner filed an application before Respondent No. 2, challenging the order of allotment (vide Annexure "5"). The impugned order (Annexure "6") has been passed on this application.

2. The case of the petitioner is that u/s 11(2)(a) of the Act, which reads as follows, Respondent No. 2 could not have allotted the house to Respondent No. 3:--

"(2) (a) Where a servant of the Government in possession of any building as a tenant intends to vacate such building, he shall give fifteen days" previous notice in writing of his intention to do so to the landlord and to the District Magistrate who shall under intimation to the landlord within a week of the receipt of the notice, either allot building to any other servant of the Government whom the District Magistrate thinks suitable subject to the payment of rent, and the observance of the conditions of the tenancy by such servant of the Government, or direct that the landlord shall be put in possession of the building:

Provided that when no such order is passed by the District Magistrate, the landlord shall be deemed to have been put in possession of the building."

According to the petitioner, Sub-section (2) (a) of Section 11 of the Act could have applied only if the building would have been let out to a servant of the Government in his personal capacity and as in this case the building was let out to the Central Government, that sub-section had no application.

3. No counter-affidavit has been filed on behalf of the Respondents Nos. 1 to 3. A counter-affidavit has been filed on behalf of Respondent No. 4, the Commissioner of Income Tax, admitting the facts alleged by the petitioner that the house was let out to the Union of India for office purposes, but, at the same time asserting that all the arrears of rent have been paid.

4. Learned Government Advocate, appearing on behalf of Respondents Nos. 1 to 3, has submitted that Sub-section (2) (a) of Section 11 of the Act would apply even to a case where a building is let out to the Government. He has relied upon a decision of the Rangoon High Court in the case of *Azee Mean v. Jeewa* AIR 1924 Rang 278 but that decision has got no application to the present case.

5. In our opinion, the contention of the learned Counsel for the petitioner is correct. From the language of sub-section (2) (a) of Section 11 of the Act, it is manifest that a servant of the Government should be in possession of the building as a tenant. If the tenant is the Government, then the servant of the Government is not in possession of the building as a tenant. He is in occupation

of the building on behalf of the Govt. Really, if a building is let out to the Government itself, then the question of allotment to another Government servant after it is vacated by one Government servant does not arise at all.

In that case the Government, being the tenant, could ask any of its servants to occupy it without any formal order of allotment being passed under the said sub-section of Section 11 of the Act Respondent No. 2 in his order (Annexure "6") has taken the view that there is no difference between a servant of the Government" and the "Government", and, therefore, Sub-section (2) (a) of Section 11 of the Act has got application to the facts of the case. He is obviously wrong. Accordingly, his order dated the 22nd May, 1973, has got to be quashed and the order of allotment as contained in Annexure "3" has to be held illegal. The application is accordingly allowed and the order dated the 22nd May, 1973, of Respondent No. 2 (Annexure "6") is quashed. The petitioner shall be entitled to costs from the State Government, Respondent No. 1. Hearing fee is assessed at Rs. 100/- (Rupees one hundred only). Respondent No. 2 should now see that Respondent No. 3 vacates the house within a month from today and the petitioner is paid rent for the period Respondent No. 3 has been in occupation of the building.