
(1970) 04 PAT CK 0016
In the Patna High Court
Case No : S.A. No. 735 of 1967

Babulal Ram

APPELLANT

Vs

Special Officer Incharge Gaya Municipality and Another

RESPONDENT

Date of Decision : 16-04-1970

Acts Referred:

Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947 — Section 18, 5, 7(1)(b), 8, 8(1)(b)

Citation : (1971) PLJR 202

Hon'ble Judges : N.L. Untwalia, J; A.N. Mukharji, J

Bench : Division Bench

Advocate : Rameshwar Prasad No. 2 and B.P. Gupta, for the Appellant; Awadh Kishore Prasad, for the Respondent

Judgement

N.L. Untwalia, J.—Babulal Ram, the sole plaintiff appellant in this second appeal, was inducted as the tenant in the suit premises on a rental of Rs. 40/- per month in April or May, 1960. Sheopujan Prasad, defendant no. 2 respondent no. 2, is the owner of the house which lies within the local limit of the Gaya Municipality, which being under supersession, was under the charge of the Special Officer at the relevant time, who is defendant no. 1, respondent no. 1. In general assessment made in the year 1959-60, the annual municipal valuation of the holding was Rs. 60/-. The appellant, taking advantage of the low municipal valuation, applied before the House Controller u/s 5 of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947, Bihar Act 3 of 1947, for determination of fair rent of the building in his occupation. The House Controller, by his order dated the 6th May, 1961, fixed the fair rent at Rs. 6/- per month mechanically following the law as he was bound to follow, engrafted in Clause (b) of Sub-section (1) of Section 8 of Bihar Act 3 of 1947. Subsequently, however, on the ground of there being alteration in the building the Municipal authorities revalued and reassessed the annual valuation of the holding and fixed it at Rs. 500/- on the basis of the said valuation, respondent no. 2 this time applied before the House Controller for re-determination of the fair rent. The appellant

then instituted the present suit giving rise to this second appeal for a declaration that the enhanced municipal valuation fixed without any notice to him was ultra vires and without jurisdiction and not binding on him and that the said valuation has been fixed in collusion with the landlord (respondent no. 2) although there were no alterations and additions in the building. During the pendency of the suit he asked for an order of injunction to restrain respondent no. 2 from proceeding with his case for re-determination of the fair rent pending before the House Controller, but it appears that there being no injunction, the proceeding terminated and the final order was passed in the case on 9-1-64 fixing fair rent at Rs. 50/- per month again in accordance with the law provided in Section 8(i) (b) of Bihar Act 3 of 1947. Thereupon, the appellant applied in the trial court to include a relief to declare the said order of the House Controller to be ultra vires and illegal. By order no. 36, dated 26-4-65 the amendment asked for was allowed but it does not seem to have been incorporated in the plaint. An issue was framed being issue no. 5 in this term--"Is the order of the Controller re-determining the fair rent of Rs. 50/- liable to be set aside?" The trial court held that alterations and additions had been made in the building and the municipal authority was justified in enhancing the annual valuation. Notice to the tenant-occupier was not mandatory and assessment cannot be held to be illegal on that account. It further held that in view of the provisions of law contained in Section 18 of Bihar Act 3 of 1947 an order of the House Controller could not be challenged and set aside in a civil court. The plaintiff went up in appeal. The lower appellate court took the same view and dismissed the appeal. Hence he has come up in second appeal to this Court.

2. Learned counsel for the appellant submitted, on the basis of the Bench decisions of this Court in the cases of (1) Messrs Rastogi Brothers through Girdhar Lal Rastogi V. Patna Municipal Corporation and (2) Awadh Bihari Saran V. Patna Municipal Corporation that (i) re-valuing or re-assessing the holding without notice to him, as he was its occupier at the relevant time was illegal and ultra vires and it is not binding on the appellant and (ii) the fair rent determined by the House Controller on the basis of the void-enhanced value is also illegal and without jurisdiction. In reply, learned counsel for respondent no. 2 (as no one has appeared for respondent no. 1), combated the argument put forward on behalf of the appellant and submitted that in any view of the matter the order of the House Controller fixing fair rent at Rs. 50/- per month cannot be questioned in the civil court. u/s 100 of the Bihar and Orissa Municipal Act, 1922 (Bihar and Orissa Act 7 of 1922) any tax which is assessed on the annual value of holdings, other than the latrine tax, is payable by the owners of the holding and the latrine tax, subject to the provisions of Section 135 of the said Act, is payable by the persons in actual occupation of the holding within the municipality. Section 135 reads as follows:--

If any holding is occupied in severally by more than one person, the commissioners may levy the latrine tax from the owner of the such holding who may recover from each occupier such sum as shall bear to the entire amount of

the tax so levied the same proportion as the value of the part of the holding in the occupation of such person bears to the entire value of such holding.

Subject to the above section, however, the liability of the occupier to pay the latrine tax is there under Sub-section (2) of Section 100 of the Municipal Act. When assessment list is prepared or revised assessment list is made, the names of the owner and occupier have got to be entered in the list as required by Section 105. If the owner does not object to the non-entry of the name of any occupier at the relevant time and the whole tax is assessed on him, it may well be, as laid down by a Bench decision of this Court in the case of (3) Patna Municipal Corporation V. Raja Ram Chandra Prasad, that he will be liable to pay latrine tax also and it may further well be that in such a case, until there is amendment or alteration of the list, the municipality may not be able to realise the latrine tax from the occupier. Rectification of the list can be made under Clause (a) of Sub-section (1) of Subsection 107 of the Municipal Act either at the instance of the owner or suo motu by the Municipality but in each case it is obvious that notice of the proposed amendment or alterations shall have to be given to the occupier under Sub-section (2). That being so, if the holding is revalued either under Clause (c) or Clause (d) of Sub-section (1) of Section 107, a notice under Sub-section (2) is imperative to be given to the occupier as he is the person interested in the proposed alteration. The command of the legislature in Sub-section (2) is not dependent on the fact of the entry of the name of the person interested in the municipality records; his name may be entered or may not be entered. If the holding is revalued without any notice to him, the re-assessment will be ultra vires, illegal and not binding on the person to whom a notice has not been given under Sub-section (2). It may be binding on the owner to whom notice was given but it cannot be binding on the occupier to whom no notice was given. It would be so not only for the purpose of determination of liability to pay latrine tax under the Bihar and Orissa Municipal Act, but would affect the determination of fair rent u/s 8(1)(b) of Bihar Act 3 of 1947. On the basis of the enhanced assessment, which is not binding on the tenant, fair rent cannot be determined. If the landlord wants the determination of the fair rent u/s 8(1)(b) on the basis of the revised assessment, it is his duty to see that at the time of re-valuing or re-assessing the holding, notice is given to the occupier, as, without such a notice the reassessment will not be binding on him. In the case of (1) Messrs Rastogi Brothers referred to above, it was pointed out with reference to the similar provisions contained in Section 139 of the Patna Municipal Corporation Act that an occupier is a person interested in the alteration of the assessment within the meaning of Section 139(2) of the Patna Municipal Corporation Act and was entitled to notice under the said provision as the requirement of giving notice does not depend upon the fact as to whether the Corporation properly maintains its records. It has been held long ago in the case of (4) Abdul Kadar Khan V. Chairman, Puri Municipality that giving of such a notice is a condition precedent to the re-assessment of the holding and any alteration made in the assessment without notice to the occupier is ultra vires

and without jurisdiction as held, in the case of (1) Messrs Rastogi Brothers. It will bear repetition to say that the Municipality may not suffer much if it has given notice to the owner and the owner has not taken care to see that the notice is given to the occupier as in that event even latrine tax may be recoverable from the owner. But the rights of the owner and the occupier with reference to the Bihar Act 3 of 1947 are materially affected and if the re-assessment is made without any notice to the tenant occupier, it will not be binding on him and in such a case the controller cannot fix the fair rent on the basis of such a valuation. I may point out one thing here that u/s 139(2) of the Patna Municipal Corporation Act there is a provision to cause a notice to be hung in the office of the Corporation which would indicate a method of a giving of general notice but even that is absent in Sub-section (2) of Section 107 of the Bihar and Orissa Municipal Act. Apart from the express provision contained in the Act, I think the principles of natural justice also require that notice of the proposed assessment should be given to the tenant as once the annual valuation of the holding is enhanced, the House Controller mechanically fixes the monthly fair rent an one-tenth of the valuation and cannot go into the question of the assessment fixed by the Municipal Authority. The right of the tenant to pay fair rent thus cannot be affected without giving him an opportunity before some authority to have his say in the matter.

3. Following the two decisions aforesaid, a Bench of this Court, of which I was a member, in the case of 5) Sarda Prasad Karamsheel V. Patna Municipal Corporation, held that in absence of notice of the proposed alteration to its tenant the revised annual valuation of the holding is ultra vires and without jurisdiction. At pages 743 to 745 it was pointed out that the law prevalent in the State of Bihar is defective. The law prevalent in West Bengal is more reasonable in that regard. There, standard rent is fixed by the building authority and the Corporation has to fix the annual valuation and assess the holding on the basis of the standard rent as said by the Supreme Court in the case of (6) the Corporation of Calcutta V. Smt. Padma Devi and others a view which has been reiterated by the Supreme Court recently. Here, in Bihar, if the case is covered by Clause (b), Sub-section (1) of Section 8 of Bihar Act 3 of 1947, the Controller has to fix the fair rent mechanically. If the case comes under Clause (c), he can judicially determine the fair rent by taking into consideration the facts and circumstances mentioned in that clause. But, mostly the cases are covered by Clause (b) and hence, as observed in that case, the municipal authorities should proceed in the matter of determination of annual valuation and assessment of the holding judicially and judiciously. How that is possible to be done unless a notice is given to the occupier and he is allowed to have his say before the Municipal Authority?

4. For the reasons given above, it has got to be held that the revised annual municipal valuation fixed by respondent no. 1 from the second quarter of 1961-62 u/s 107(i)(d) of the Municipal Act is illegal and ultra vires in so far as it affects the right of the appellant. It is not binding on him. The courts below have

committed an error of law in holding it otherwise. The learned Additional Subordinate Judge has wrongly distinguished the Bench decision of this Court in the case of (1) Messrs Rastogi Brothers through Girdhar Lal Rastogi V. Patna Municipal Corporation. Yet, the appellant in this suit is not entitled to get the relief of a declaration that the order of the House Controller dated 9-1-64, fixing the fair rent at Rs. 50/- per month during the pendency of the suit, is ultra vires, and without jurisdiction. It may be right, it may be wrong. The remedy of the appellant is to approach the House Controller for re-determination of the fair Rent u/s 7(1)(b) of Bihar Act 3 of 1947. It will be open to the Municipal authority to give notice to the appellant for re-valuing and re-assessing the holding in question from the second quarter of 1961-62 and thereafter to re-determine the value as the authority thinks fit and proper in accordance with law. It is obvious that the fair rent will have to be re-determined in accordance with the fresh valuation or assessment, which may be made by the Municipal authority in the meantime. But, in absence of any fresh valuation or (Sic) assessment on the basis of the old valuation, the fair rent will have to be re-determined by the House Controller. In the result, the appeal is allowed in part, the suit of the appellant is partly decreed and it is declared that the determination of the valuation and assessment of the holding at Rs. 500/- per year from the second quarter of 1961-62 by respondent no. 1 is illegal and not binding on the appellant. In the circumstances, the parties are directed to bear their own costs throughout.

A.N. Mukharji, J.

I agree.