
(2015) 08 PAT CK 0095
In the Patna High Court
Case No : CWJC No. 1771 of 2014

Bijay Kumar and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 24-08-2015

Acts Referred:

Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 — Section 26
Constitution of India, 1950 — Article 226

Citation : (2015) 4 PLJR 112

Hon'ble Judges : Rakesh Kumar, J.

Bench : Single Bench

Advocate : Ganpati Trivedi and Sanjay Kumar Pandey, for the Appellant; Divya Verma, for the Respondent

Final Decision : Allowed

Judgement

Rakesh Kumar, J.—Heard Sri Ganpati Trivedi, learned senior counsel, who was assisted by Sri Sanjay Kumar Pandey, learned counsel for petitioners and learned A.C. to Addl. Advocate General-3. Petitioners/landlords, invoking writ jurisdiction of this Court under Article 226 of the Constitution of India, have prayed for quashing of an order dated 9.12.2013 passed by the learned Commissioner, Bhagalpur Division, Bhagalpur/respondent No. 2 in Banka Misc. (House Control) Revision Case No. 1 of 2013-14 (Annexure-8). By the said order, the learned Commissioner has reduced the monthly rent of the premises, which is in occupation of respondent No. 5 from Rs. 60,000/- (sixty thousand) per month to Rs. 45,000/- (forty five thousand) per month with certain conditions. It is not in dispute that the petitioners being landlord had let out their premises measuring total area of 9369 square feet (covered area + open area). Break-up of the same is 3450 sq. feet as covered area and 5919 sq. feet as open area, which is in occupation of the tenant/respondent No. 5. Petitioners had approached the House Controller for fixation of fair rent, vide House Control Case No. 7 of 2009, in which, the House Controller firstly summoned a report from the Circle Officer. After receipt of the report, same was provided to the parties. The said report was

placed before House Controller, suggesting the fair rent for covered area as @ Rs. 9/- per sq. feet and open area @ Rs. 5/- per sq. feet. On receipt of the report of the Circle Officer, no objection was raised by the tenant and finally, the House Controller fixed the rent for covered area @ Rs. 9/- per sq. feet and recommended for total Rs. 60,000/- as fair rent per month. After the House Controller fixed the rent, the respondent No. 5 preferred an appeal before the Collector, vide House Control Appeal Case No. 3 of 2010-2011. The appellate court i.e. Collector, Bhagalpur confirmed the order of the House Controller by its order dated 9.5.2011. Though, the appellate court affirmed the order of the House Controller in the year 2011, the tenant/respondent No. 5 did not take any step, however; after expiry of about three years, the respondent No. 5 preferred a revision under Section 26 of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982. Finally, the revisional court i.e. Commissioner, Bhagalpur Division reduced the monthly rent from Rs. 60,000/- to Rs. 45,000/-, which has been assailed in the present writ petition.

2. Sri Trivedi, learned senior counsel for petitioners submits that the revisional order is fit to be set aside on the ground that though there is statutory provision of filing revision within fifteen days, without any petition for condonation of delay and without condoning the delay, final order has been passed by the revisional court. Further, he has submitted that there was no rational for the revisional court to reduce the rent, which was fixed by the House Controller on the basis of the report of the Circle Officer. The report was prepared on the basis of prevalent rent in the area. However, without assigning any cogent reason for reducing the fair rent, the Commissioner, in a whimsical manner, has reduced the same, which is liable to be set aside.

3. Miss Divya Verma, learned counsel for the State, opposing the prayer of petitioners, submits that the report of the Circle Officer was in respect of commercial rent, whereas, the tenant was not indulged in any commercial activity, rather it was a government office and as such, the learned Commissioner has rightly reduced the rent.

4. Besides hearing learned counsel for the parties, I have also perused the materials available on record. It is not in dispute that the revision was preferred after about three years from the order of the appellate court. On perusal of Annexure-7 to the writ petition, which is certified copy of the entire order-sheets of the revisional authority, it is evident that the learned Commissioner has not at all examined or passed order regarding condonation of delay in filing revision at such belated stage. In view of Rule 7 of the Bihar Buildings (Lease, Rent and Eviction) Control Rules, 1983, for filing revision, 15 (fifteen) days statutory period has been prescribed. Once the statute provides for filing revision within prescribed time, provided the applicant had explained regarding sufficient cause, which prevented him/her in filing revision, the revision application was not required to be adjudicated by the Commissioner without condoning the delay. On the record, there is nothing to suggest that the learned Commissioner had taken

pain to condone the delay in filing revision and as such, the revisional authority has exercised its jurisdiction incorrectly in entertaining the revision without condoning the delay. Similarly, though he has reduced the rent from Rs. 60,000/- to Rs. 45,000/-, no cogent reason has been assigned for reducing the same. Moreover, the learned Commissioner has not called for any report regarding the prevalent rent in the area. Only on his own wisdom, he has reduced the rent, which may not sustain in the eye of law.

5. Accordingly, in view of the facts and circumstances, the order of the revisional authority suffers with illegality and as such, the order impugned i.e. order dated 9.12.2013 passed by the Commissioner, Bhagalpur Division, Bhagalpur in Banka Misc. (House Control) Revision Case No. 1 of 2013-14 is, hereby, set aside. The writ petition stands allowed.