
(2002) 08 JH CK 0086
In the Jharkhand High Court
Case No : CWJC No. 1531 of 1991 (R)

Dayalji Madhavji	Vs	APPELLANT
State of Bihar and Others		RESPONDENT

Date of Decision : 30-08-2002

Acts Referred:

Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 — Section 16, 8, 9

Citation : (2002) 08 JH CK 0086

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : Rajendra Prasad, for the Appellant; G.P. I, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—Petitioner seeks writ in the nature of certiorari for quashing the order dated 29.10.1995 passed by respondent No. 3, Deputy Commissioner, Dhanbad and also order dated 20.1.1995 passed by respondent No. 2 Commissioner, North Chhotanagpur Division. Hazaribagh in a proceeding for determination of fair rent under the provisions of Bihar Building (Lease, Rent and Eviction) Control Act, 1982 and further for a direction upon respondent No. 5 to pay all the rents so fixed by respondent No. 4 Sub-divisional Officer-cum-Rent Controller, Dhanbad.

2. Petitioner is landlord of the building situated at Katras Rajgunj Road, Katrasgarh in the district of Dhanbad. Respondent No. 5 is a tenant in respect of a portion of the building premises. In 1990, petitioner filed application against several tenants occupying building premises including the petitioner for determination of fair rent. The application filed against respondent No. 5 was numbered as HRC Case No. 35/1990. The Sub-divisional Officer-cum-Rent Controller, Dhanbad before whom the case was transferred, finally disposed of the application by passing a reasoned order 12.8.1991 determining the fair rent of the premises in occupation of respondent No. 5 at the rate of Rs. 150/-per sq. feet.

3. Aggrieved by the said order respondent No. 5 preferred an appeal before respondent No. 3, Deputy Commissioner, Dhanbad being HRC Appeal No. 12/91. The Deputy Commissioner being the appellate authority by passing a reasoned order dated 17.2.1992 directed the respondent tenant to comply with the provisions of Section 16 of the said Act. It appears that instead of complying the aforesaid direction the respondents preferred writ petition being CWJC No. 1026/1992 (R) challenging the order passed by the Deputy Commissioner u/s 16 of the said Act. The writ application was heard by a Division Bench on 1.4.1992 alongwith other writ petitions filed by other tenants and it was admitted for hearing. The Division Bench while admitting the writ petition directed the respondents to deposit 50% of the current and future monthly rent till the disposal of the writ petition. The writ petition was finally heard and dismissed on 12.11.1992. The Division Bench refused to exercise their discretion in interfering with the order of the Deputy Commissioner on the ground that respondents even did not comply the direction of the Court dated 1.4.1992. It appears that after the disposal of the writ petition the appeal filed by the respondents before the Deputy Commissioner against the order of the Rent Controller was finally heard and the Collector, Dhanbad in terms of his order dated 29.10.1995 fixed the rent at the rate of Rs. 250/- per month. The petitioner/landlord challenged the aforesaid order of the Collector by filing revision before the Commissioner, North Chotanagpur Division, Hazaribagh. The Commissioner took the view that in terms of Section 8 of the said Act and the rules made thereunder the rent of the tenanted premises cannot be increased for more than 25% of the average monthly rent. The revisional authority therefore affirmed the order passed by the Collector. These orders are the subject matter of this writ petition.

4. I have heard Mr. Rajendra Prasad, learned counsel for the petitioner and the learned counsel for the respondents. No. one appears on behalf of respondent No. 5 inspite service of notice.

5. As noticed above, the Deputy Commissioner being the appellate authority by order dated 17.2.1992 in the appeal filed by respondent No. 5 directed him to comply the provisions of Section 10 of the said Act. Instead of complying the aforesaid order the petitioner filed writ petition being CWJC No. 1026 of 1992 (R). Other tenants also against whom similar order was passed challenged the same by filing separate writ petition. All those writ petitions were heard and disposed of by a Division Bench of the Patna High Court. The Division Bench while admitting the writ petition passed interim order dated 1.4.1992 directing the tenants including respondent No. 5 to deposit 50% of the current and future rent till disposal of the writ petition. This order was not complied with by respondent No. 5 consequently the Division Bench refused to interfere with the order passed by the appellate authority. The relevant portion of the judgment of the Division Bench quoted herein below :

"From perusal of the Challans appended with the supplementary affidavits of the petitioners, it is clear that the petitioners have not deposited the rent for the

month of July, 1992. Accordingly, I hold, agreeing with the submission of the learned counsel appearing on behalf of respondent No. 8 that the petitioners had defaulted in compliance of the directions made by this Court vide its order dated 1st April, 1992 and are not entitled to exercise of discretion in their favour.

For the reasons aforementioned, I do not find any merit in these writ petitions. They are, accordingly, dismissed but in the peculiar facts and circumstances I make no order as cost."

6. In spite of the aforesaid facts, the Appellate Authority while disposing of the appeal on merit has travelled beyond the provisions of Section 8 of the Act and Rules made therein and in a very arbitrary manner fixed the fair rent of the building premises at Rs. 250/- per month on the basis of report submitted by the Block Development Officer. The commissioner in the revision filed by the petitioner also failed to consider the order passed by the Controller and without meeting the reasoning given in the order of the Controller, he has affirmed the order passed by the Appellate Authority. The impugned orders passed by the Appellate Authority and the Revisional Authority therefore, cannot be sustained in law.

7. For the aforesaid reasons, this writ application is allowed and the impugned orders passed by the Appellate Authority and the Revisional Authority determining the fair rent of the said premises at Rs. 250/- per month is quashed. The matter is remanded back to the Appellate Authority to decide the appeal afresh after hearing both the parties.