(2006) 11 PAT CK 0106

In the Patna High Court

Case No : LPA No. 302 of 1998

Deo Narayan Choudhary and Another — APPELLANT

Vs

The State of Bihar and Others — RESPONDENT

Date of Decision : 14-11-2006

Acts Referred:

Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 — Section 16, 2(h)(1), 5, 6, 7

Citation : (2007) 1 PLJR 745

Hon'ble Judges : Barin Ghosh, J;Ajay Kr. Tripathi, J

Bench : Division Bench

Advocate : B.K. Ambastha, for the Appellant; K.P. Gupta for the Respondents (State) and Mr. B.K. Tripathi for Private Respondents (5 to 7), for the Respondent

Judgement

Ajay Kr. Tripathi, J.—The landlords Deo Narayan Choudhary and his nephew Chandra Prakash are before us as appellants aggrieved by order dated 9th February, 1998 passed in C.W.J.C. No. 7955 of 1996. The dispute has had many rounds between the landlords, the appellants and the tenants, the respondents. A brief background may be noted.

2. The landlords had rented out the house in question which is Housing Board Flat bearing No. MIG 148 located at main road of Kankarbagh, at Patna, to the mother of respondent Nos. 5 to 7, who is now deceased. The house is supposed to have some vacant land also. The original tenant, namely, M/s Roohi Shoghi had taken the house on rent for a period of 11 months starting from 1.1.1985 on a monthly rental of Rs. 2,600/-. This lease was subsequently extended twice for 11 months each and the same had finally expired on 31.12.1987.

3. It is stated by the appellants that appellant No. 1 being a retired Government servant served a notice on lessee for vacation of the house in question but the same was not vacated. Therefore, with the intention to put pressure on the tenant instead of taking recourse to an eviction proceeding decided to move the House Controller for fixation of fair rent. It may be pointed out that the landlord

in the year 1983 had got a fair rent fixed by the House Controller at Rs. 3,186/- per month with effect from 1.4.1981. However since they were no takers of the house at the fair rent fixed, the appellants decided to lease out the premises to the mother of respondent Nos. 5 to 7 at a lessor rent of Rs. 2600/- per month only.

4. On the basis of the application moved by the appellants the House Controller registered a case bearing B.B.C. Case No. 216 of 1988. The matter was contested between the parties. The House Controller, respondent No. 4, directed an Executive Magistrate, namely, Sri A.H. Rahi to make spot enquiry of the building and submit his report. The Executive Magistrate after enquiry submitted his report on 25.4.1988 which is annexure-1 to the writ application. The Executive Magistrate in his report recommended the fair rent of the built up area consisting of 1724 Sq.ft. to be fixed at the rate of Rs. 2.25 paise per sq. ft. amounting to Rs. 3,879/-, Rs. 568, for new construction at the rate of Rs. 1.50 per sq.ft. and Rs. 2,021/- for remaining vacant land of 2021 sq. ft. at the rate of Rs. 1/-. A sum total of the revised fair rent was recommended of Rs. 6468/- per month.

5. It is relevant to point out that the report of the Executive Magistrate dated 24.4.1988 was based on ipse dixit rather on the parametres laid down under Bihar Buildings (Lease, Rent & Eviction) Control Act, 1982 (hereinafter as B.B.C. Act). The relevant provisions in this regard are Section 8 read with Rule 3(ii) sub-rule (a) to (g).

6. In any determination of fair rent the parametres laid down in the section and rule has to be taken into consideration or else it shall fall foul of the power conferred upon the House Controller. The House Controller however accepted the recommendation of the Executive Magistrate in toto and fixed the fair rent of Rs. 6,468/-per month vide his order dated 5.9.1988. It is stated that belatedly an appeal was filed by the tenants which was dismissed as being time barred by the Additional Collector, the appellate authority. The mother of respondent Nos. 5 to 7 filed a revision before the Commissioner and the Commissioner remanded the matter to the Additional Collector to hear the matter on merit after condoning the delay. On remand the matter was heard on merit. However, the Additional Collector again vide order dated 13.7.1993 dismissed the appeal upholding the order of the House Controller.

7. The tenants thereafter filed a revision before the Commissioner challenging the order of the Additional Collector though samewhat belated. In the meantime the appellants i.e. the landlord, filed a petition before the House Controller for withdrawal of the rent which had been deposited by the tenant u/s 16 before preferring the appeal under B.B.C. Act. The appellants were allowed to withdraw 75% of the amount so deposited and 25% was retained by the House Controller. However, the balance 25% was also allowed to be withdrawn on furnishing a bond later.

8. The revision in the meanwhile was taken by the Commissioner and the landlords objected to the maintainability of the revision application basically on two grounds that there was inordinate delay in preferring revision and that the revision itself was not maintainable because the original tenant Roohi Shoghi had died and after her death the heirs could not be treated as tenants who are sons and daughters.

9. The Commissioner passed an ex parte order on 1.11.93 setting aside the order of the House Controller. The landlords aggrieved by the said order dated 1.11.93 preferred a writ before the High Court bearing C.W.J.C. No. 10855 of 1994. The writ court after hearing the parties disposed of the same directing the Commissioner to consider the matter on merit and decide it in accordance with law.

10. After remand both the parties appeared before the Commissioner on 6.2.1996. The matter was kept pending for a while as the landlords raised certain objections before the Commissioner expressing lack of faith in him. They informed the Commissioner that they had filed a writ application bearing C.W.J.C. No. 2120 of 1996 for transfer of the case. But no order was brought before the Commissioner in this regard from the High Court. Ultimately the matter was heard on 9.7.1996 in presence of both the parties. The Commissioner vide his order dated 23.7.1996 (annexure-6 to the writ application) set aside the order of the House Controller stating the reasons therein in detail.

11. The Commissioner further directed the landlord that since the fair rent fixed has been set aside, the amount of Rs. 1,35,469.60 deposited in the treasury through Challen by the tenant should be refunded to the tenant after satisfying that the petitioners are the only legal heirs of Roohi Shoghi, original tenant. The landlord was directed to deposit the above amount in one lump sum. On failure of the landlord to do so the Collector, Patna was directed to recover the amount as public demand and shall also file criminal case for violating the assurance given to the House Controller at the time of drawal of the above amount.

12. Aggrieved by the order dated 23.7.1996 of the Commissioner the landlords, filed a writ bearing C.W.J.C. 1955 of 1996. The writ application was heard and the writ court vide order dated 9.2.1998 allowed the writ with partial relief to the landlords. The direction given by the Commissioner to the Collector to recover the fair rent withdrawn by the landlords as a public demand as well as institution of a criminal case on his failure to deposit the amount was set aside. However the writ court expressed no opinion with regard to the order of the Commissioner who had set aside the fixation of fair rent fixed by the House Controller.

13. In this appeal both the appellants and the tenants, namely, respondents 5 to 7 are before us. Both have placed their contentions.

14. The appellants'' main grievance is that the writ court has committed an error of law by not setting aside the order of the Commissioner which had quashed the order of fair rent fixation by the House Controller as the fixation of fair rent was

legal, valid and in terms of the B.B.C. Act.

15. On the other hand the respondents 5 to 7 i.e. the tenants contended that the writ court had misapplied himself by quashing the direction of the Commissioner which would have enabled the Collector to recover a sum of Rs. 1,35,469. 60, which was deposited by them and has been illegally withdrawn by the landlords. They further contended that since revised fair rent fixed by the House Controller has been held to be illegal, the landlord could not be permitted to retain or enjoy the money. They were compelled to deposit the sum under the Act to maintain their appeal and revision before the competent authorities. In any case the fair rent fixed by the House Controller was rightly quashed as it was fixed in violation of Section 8 and Rule 3(ii)(a) to (g). The challenge of the landlords that respondents 5 to 7 had no legal status on the death of their mother, the original tenant, is misplaced as they were the legal heirs as per Section 2(h)(1) & (iii) of B.B.C. Act.

16. The B.B.C. Act is a composit Act which governs various aspects of lease, rent and eviction governing landlords and tenants in the State of Bihar. It is a beneficial piece of legislation both for the landlord as well as the tenant and the authorities conferred with the powers under various sections of the Act have been given guidelines both under the Act as well as the Rules notified as Bihar Buildings (Lease, Rent & Eviction) Control Rules, 1983. The substantive sections which deal with determination of fair rent are laid out in Sections 5, 6, 7 and 8. However, the relevant provisions would be Section 8 read with Rule 3(ii) sub-rule (a) to (g). Section 8 & Rule 3 of B.B.C. Act, 1982 are quoted below for proper appreciation:-

18. Section 8: Matters to be considered in determining fair rent.-

(1)(a) For the purposes of this Act the fair rent of building shall be determined as for a tenancy from month to month.

(b) The fair rent of a building shall be determined in accordance with the rules framed for this purpose.

(c) In determining the fair rent of any building u/s 5 or 6, the Controller shall have due regard to the prevailing rates of rent in the locality for the same or similar accommodation in similar circumstances at any time during the twelve months preceding the first day of December, 1980 and to the increased cost of repairs, and in the case a building which has been contructed after that date, also to any general increase in the cost of site and building construction:

Provided that where the Controller is satisfied, on an application made to him by the landlord u/s 5, that the rent of a building referred to in this clause is low, the Controller shall, in determining the fair rent of such building to be payable by a tenant, fix the rent of the building at a figure which shall not be less than the average monthly rent actually paid for the same or similar accommodation by any tenant over the period of twelve months preceding the first day of December, 1980 increased by not more than 25 per cent of the average monthly rent so received by the landlord during the aforesaid period in addition to the enhancement, if any, on account of the increased cost of repairs or the general increase in the cost of site and building construction, where such enhancement is admissible under the foregoing provision of this clause.

Explanation.-(1) For the purpose of this clause, where rent was charged by the landlord or actually paid by the tenant for the same building over the aforesaid period on any other than a monthly basis, the average monthly rent for such building shall be calculated at thirty times the average rent per day of the period in respect of which the rent was charged or actually paid.

(2) When the fair rent of a building has been determined or re-determined, any sum in excess or short of such fair rent paid, in respect of occupation for any period after such date shall in case of excess, be refunded to the person by whom it was paid or at the option of such person be otherwise adjusted and, in case of shortage be realised by the landlord as arrears of rent from the tennat:

Provided that if a building is let out subsequent to the determination or re-determination of a fair rent, on a rent which is less than the fair rent, so determined or re-determined, the landlord shall not be entitled at any time to realise the difference between that fair rent and the rent at which the tenant was admitted to occupation.

Rule 3(i) "The Controller may determine the fair rent of a building either on the application by the landlord or by the tenant in possession of the building or on his own motion as also on the application of the landlord or prospective tenant.

(ii) In determinina the fair rent the Controller shall take into account the following factors:-

(a) The prevailing rates of rent in the locality for the same or similar accommodation in similar circumstances at any time during the twelve months preceding the date of his order;

(b) The increased cost of repairs required to be made in the building;

(c) The amenities, general or special provided in the building;

(d) The compound or the open land attached to the building;

(e) The type of construction and the location of the building and the nature of tenancy, i.e., whether it is for residential purpose, business purpose, etc.;

(f) The municipal tax or corporation tax of the building;

(g) Any lawful agreement entered into by the landlord and the tenant.

17. A joint reading of Section 8 read with Rule 3(ii) sub-rule (a) to (g) gives out the parametre under which the House Controller while determining fair rent of any building shall give due regard to in the said determination. It is well settled

that while determining the fair rent the authorities concerned must take into consideration Section 8 of the Act and more so Rule 3(ii) sub-rule (a) to (g). The factor incorporated into the rule if not taken into account would amount to illegal determination or invalid determination on the part of the House Controller.

18. As already indicated above the House Controller had redetermined the fair rent of the building in question on the report of the Executive Magistrate dated 25.4.1988 which is annexure 1 to the writ application. A perusal of the report of the Executive Magistrate would indicate that the Executive Magistrate has not given any finding with regard to the parametres laid down in Rule 3(ii) sub-rule (a) to (g). The main thrust of the report of the Executive Magistrate is that the house in question is located near the Bazar and the rental in the area has gone up substantially since 1981. The general rental in the area is very high. The house is being used for commercial purpose and therefore revised rental of Rs. 6480.50 is recommended. The House Controller has based his order on the report of the Executive Magistrate and has accepted the recommendation of the Executive Magistrate in toto. This in our opinion is an illegality committed by him since the report of the Executive Magistrate did not give any finding with regard to any of the parametre which is mandatory under Rule 3(ii) sub-rule (a) to (g). In-absence of the basic material which is necessary for consideration for fixation of fair rent any order passed with regard to refixation of fair rent by the House Controller cannot be said to be inconsonance with law and therefore the same cannot be upheld. It is being recorded that the appellate authority, the Additional Collector went by the reasoning given by the House Controller. In revision the Commissioner set aside the order of the House Controller and by doing so he has committed no illegality. It was in this background that the writ court refused to interfere with that part of the order of the Commissioner which set aside the refixation of fair rent by House Controller for the house in question. The submission of the appellants in this regard cannot be accepted and to that extent the order of the writ court need not be interfered with.

19. I however, feel that the writ court has committed an error by quashing the direction of the Commissioner to the Collector to recover amount deposited by the tenant, as a statutory requirement, for maintaining his appeal and revision. The sum of Rs. 1,35,469.60 was deposited by the tenant as a pre requisite u/s 16 of the B.B.C. Act. Once the fair rent fixed by the House Controller is set aside by the higher authority, the landlord has no claim over the money which he had withdrawn from the treasury on the order of the House Controller during the pendency of the revision application. In any case the landlord had given an undertaking while withdrawing the above amount and he cannot be allowed to retain the amount so deposited by the tenant. The order fixing fair rent itself is no longer in existence and the same has been set aside by the revisional authority i.e. the Commissioner and the writ court did not interfere with the same in its order dated 9.2.1998. In view of the above facts if the order of the Commissioner to that extent is interfered with it will be impossible for the tenant to recover a large sum of money from the landlords which is being illegally

retained by them. In view of the factual and legal position indicated above, I am of the opinion that the order dated 9.2.1998 passed by the writ court to the extent indicated above needs to be interfered with and the same is set aside. The order dated 23.7.1996, annexure-6 to the writ application passed by the Commissioner in Revision Case No. 133 of 1993 is upheld. The appeal accordingly fails. However there will be no order as to cost.

Hon''ble Barin Ghosh, J.

20. I agree.