

(1989) 10 PAT CK 0007

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 541 of 1988

Dr. Sachidanand Sinha

APPELLANT

Vs

The Collector, Patna and others

RESPONDENT

Date of Decision : 04-10-1989

Acts Referred:

Bihar and Orissa Public Demands Recovery Act, 1914 — Section 60(1)
Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947 — Section 11A, 15
Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 — Section 10, 15, 15(1), 15(1), 16
Bihar Official Language Act, 1950 — Section 2
Constitution of India, 1950 — Article 345, 348, 348(1), 348(3)
Customs Act, 1962 — Section 129E, 24, 26
Income Tax Act, 1961 — Section 249(4)

Citation : (1989) PLJR 1141

Hon'ble Judges : U.P. Singh, J;N.P. Singh, J;B.N. Agrawal, J

Bench : Full Bench

Advocate : Ram Balak Mahto, Shivanand Pd. Sinha and Purushottam Jha, for the Appellant; Shyam Prasad Mukherje, J.N Sahu and M/s Kamlapati Singh, Ishwari Singh, P.N. Singh and Sangeeta Das Gupta, for the Respondent

Judgement

N.P. Singh, J.—This writ application has been filed on behalf of the petitioner for quashing an order passed by the Collector, Patna as appellate authority in exercise of the power under sub-section (2) of section 16 of the Bihar Building (Lease, Rent and Eviction) Control Act, 1982, directing the petitioner to deposit the rent at the rate fixed by the Controller during the pendency of the appeal. That order has been affirmed by the Commissioner, Patna. The case has been referred to a Full Bench for consideration of the following question :

Whether during the pendency of an appeal before the appellate authority against an order passed by the Controller determining the fair rent in respect of any premises or a revision before the Commissioner against an order of the appellate authority, it is open to the appellate authority or the Commissioner to direct the tenant u/s 16 (2) of the Bihar Buildings (Lease, Rent and Eviction) Control Act,

1982, to deposit rent during the pendency of such appeal or revision, at a rate different from the rate fixed by the Controller.

2. Section 5 of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 (hereinafter referred to as "the Act") vests power in the Controller to determine the fair rent for any building on an application being filed by the landlord or the tenant after making an enquiry. u/s 24 any person aggrieved by any such order passed by the Controller fixing fair rent of any building or premises can file an appeal. Section 24 is as follows :

24. Appeal.--(1) Any person aggrieved by an order passed by the Controller may, within fifteen days from the date of receipt of such order by him, prefer an appeal in writing to the appellate authority.

(2) On such appeal being preferred, the appellate authority, may--

(a) after perusing the memorandum of appeal and hearing the appellant, if necessary, summarily dismiss the appeal or

(b) call for the records of the case from the Controller and after examining such records and, if necessary, making such further enquiry as he thinks fit decide the appeal.

(3) Subject to the provision of section 26 the decision of the appellate authority and subject only to such decision where an appeal lies, an order of the Controller shall be final, and shall not be liable to be questioned in any Court of law whether in suit or other proceeding by way of appeal or revision.

Section 26 vests power in the Commissioner of the Division to revise any order passed by the appellate authority on appeal.

3. Section 16 which is the subject-matter of controversy is as follows :

16. Deposit of rent determined by the Controller during the pendency of appeal or revision.--(1) Where the fair rent of any building has been determined by the Controller under provisions of this Act and the tenant prefers an appeal to the appellate authority against the order of the Controller or makes an application for revision to the Commissioner against the order of the appellate authority, as the case may be, it shall be required of the tenant to pay the rent at the rate fixed by the Controller month to month by the fifteenth day of the following month, together with arrears, if any, and he may deposit such rent in the prescribed manner stating the circumstances in which such deposit is made until the dispute regarding the fair rent has been settled between the parties.

(2) The appellate authority or the Commissioner may, after giving an opportunity to the parties to be heard, make an order for deposit of rent at such rate as may be determined, month by month and arrears of rent if any, and in case of noncompliance of this order, the appellate authority or the Commissioner shall order the defence against the fair rent order to be struck off. The landlord may apply for permission to withdraw the amount of rent so deposited without

prejudice to any other legal remedy to which he is otherwise entitled and the court may permit him to do so.

4. There is some difference in the Hindi and English version of section 16 . As such it is necessary to reproduce section 16 in Hindi.

5. On a plain reading, sub-section (1) of section 16 requires the tenant to deposit the rent at the rate determined by the Controller month to month by the fifteenth day of the following month, together with arrears, if any during the pendency of the appeal before the appellate authority or revision before the Commissioner. Such deposit is to be made by the tenant according to English version of subsection (1) of section 16 "until the dispute regarding the fair rent has been settled between the parties". However, the Hindi version of sub-section (1) of section 16 requires the tenant to deposit the rent at the rate fixed by the Controller till the dispute regarding fixation of fair rent is decided by the competent court or the dispute is settled between the parties, by com-

6. In view of conflict between the Hindi and English version of section 16 (1) , a question arises as to which version shall prevail. This is bearing on the question, whether sub-section (1) of section 16 controls sub-section (1) of section 16 and curtails the power of the appellate authority or the Commissioner to determine the rate at which the tenant shall deposit the rent during the pendency of the appeal or revision.

7. Article 348 (1) of the Constitution provides that until Parliament by law otherwise provides the authoritative texts of all Bills to be introduced in either House of the Parliament or either House of the Legislature of a State, and all Acts passed by the Parliament or the Legislature of a State and of all Ordinances promulgated by the President or the Governor of a State, shall be in the English language. Article 348 (3) , however, says that notwithstanding anything in sub-clause (b) of clause (1) of the said Article, where the Legislature of a State has prescribed any language other than the English language for use in Bills introduced in, or Acts passed by, the Legislature of the State or in the Ordinances promulgated by the Governor of the State, "a translation of the same in the English language published under the authority of the Governor of the State in the Official Gazette of that State shall be deemed to be the authoritative text thereof in the English language under the said Article.

8. It is not in dispute that the Bihar Legislature has prescribed Hindi language for use in Bills introduced in the Legislature for the purpose of enactment or for Ordinances to be promulgated by the Governor so far the State of Bihar is concerned. In the case of Mathura Prasad Singh and others v. The State of Bihar and others (A.I.R. 1975 Patna 295), a question arose as to whether till the English authorised version of the Ordinance in question had been published, it shall be deemed that the Hindi version of the Ordinance having been promulgated by the Governor has not come in force. In that connection it was pointed out by this Court :

Undisputedly, the Bihar Legislature has provided for such Ordinances being in Hindi. That being the position, the Ordinance cannot be said to be non est simply because a translation of the same in English language has not been published under the authority of the Governor. Clause (3) also does not lay down that, if such a translation is not published, the Ordinance will not be effective. All that it lays down is that, if such a translation is published, it will be deemed to be an authoritative text thereof in the English language, having preference over any other translation of the Ordinance in Hindi. By virtue of this Article, the English translation provided under this clause is not meant to satisfy the requirement of clause (1) that such an Ordinance shall be in the English language. Under the scheme of Article 348 of the Constitution, all Ordinances made in Hindi where the legislature has so authorised will be a valid piece of legislation even without its English translation and where an English translation has been published as laid down therein, the said translation will be also considered to be a valid piece of legislation and both can be looked into as the authorised version of the Ordinance.

In the case of J.K. Jute Mills Co. Ltd. Vs. The State of Uttar Pradesh and Another, it was observed :

It should further be noted that the validation Act was published both in Hindi and in English, and both of them were authorised versions.

Again in the case of Shree Alok Kumar Agrawal and ors v. The State of Bihar and anr. (A.I.R. 1976 Patna 392), it was pointed out :

Clause (3) of Article 348 has got an overriding effect over Clause (1) and recognised the right of a State contained under Article 345 to adopt any language other than the English language for use in Bills introduced in or Act passed by, the Legislature of the State or in Ordinance promulgated by the Governor of the State. Reading the version contained in clause (3) of Article 348, it cannot be legitimately contended that it is not permissible to a State Government to prescribe any language other than the English language for use in its official business until the Parliament made any such law.....Section 2 of the Bihar Official Language Act, quoted earlier, has adopted Hindi in Devanagari script as the language to be used for the official purpose of the State of Bihar without any qualification..... in my opinion, by no stretch of imagination it can be lawfully contended that the publication of the English translation is a condition precedent for the enforcement of any Act or Ordinance, etc. made in the State language.

9. It may be pointed out that during the hearing of this case, none of the Counsel including the learned Advocate General, who appeared on behalf of the petitioner, in the present case, produced any material to show that the English version of the Act before us is the translated version of the Act in Hindi, in accordance with the requirement of Article 348 (3) of the Constitution. While publishing the translated version of section 16 (1) under the authority of this

State, as required by Article 348 (3) of the Constitution, how such an important part was overlooked or omitted is difficult to explain. As such it is proper to proceed to construe the effect of sub-section (1) of section 16 on the basis of the Hindi version of sub-section (1) of section 16 .

10. The Hindi version of sub-section (1) of section 16 says in clear and unambiguous words that during the pendency of the appeal or revision the tenant is required to deposit the rent at the rate fixed by the Controller and he has to go on depositing the same until the dispute regarding the fair rent is finally decided by the competent court meaning thereby the appellate court/ revisional court or settled between the parties by compromise. In view of sub-section (1) of section 6 , there should not have been any difficulty in holding that the tenant has to deposit the rent month to month and arrears, if any, at the rate fixed by the Controller till the dispute regarding rate of rent is decided by disposal of appeal or revision by the appropriate authority or the Commissioner. But the controversy has arisen due to subsection (2) of section 16 which says that the appellate authority or the Commissioner may, after giving an opportunity to the parties to be heard, make an order for deposit of rent at the rate determined, month by month and arrears of rent, if any, and in case of non-compliance of any such order passed by the applicable authority or the Commissioner "the defence against the fair rent order" has to be struck off. On behalf of the tenant petitioner it was submitted that under sub-section (2) of section 16 power has been vested in the appellate authority or the Commissioner to make an order for deposit of a rent during the pendency of the appeal or revision at a rate determined by such appellate authority or Commissioner and the tenant has to deposit rent at that rate till the appeal or revision is finally disposed of. Prima facie, this submission appears to be attractive if sub-section (2) of section 16 is read in isolation. In that event it can be said that sub-section (2) of section 16 is a provision in the nature of subsection (1) of section 15 of the Act which is applicable during the pendency of a suit for eviction filed by the landlord. Sub-section (1) of section 15 empowers the Court where the suit for recovery of possession of any building is pending, to determine the rate of rent last paid by the tenant defendant to the plaintiff landlord and to direct the defendant to deposit rent at that rate month to month, along with arrears, if any, during the pendency of the suit, failing which the Court has to strike off the defence against ejectment and to place tenant in a position as if he had not defended the claim to ejectment.

11. The question whether under sub-section (1) of section 15 the Court concerned has power to determine the rate of rent at which it was last paid has been examined by this Court as well as the Supreme Court. It has been held that the Court before passing an order under sub-section (1) of section 15 directing the tenant to deposit rent at the rate it was last paid can make an enquiry for determination as to at what rate the rent was last paid. Reference in this connection may be made to the case of Ganesh Prasad Sah Kesari and Another Vs. Lakshmi Narayan Gupta, where speaking about the scope of section 11-A of

the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947, which has been replaced by section 15 of the present Act and the relevant part with which we are concerned being virtually identical, it was said as follows :

It also enables the Court to determine the rate of rent at which the deposit shall be made, where in a case there is a dispute as to the rate of.....Therefore, where eviction is sought on the ground of nonpayment of rent, it places a tenant at a comparative disadvantage if the landlord chooses to claim rent at the rate which is beyond the capacity of the tenant to pay. In such a situation, the tenant will be exposed to double jeopardy in that on a prima facie pleading he will be directed to deposit the rent at the rate claimed by the landlord, if the court has no power to determine rate of rent at an interim stage. Such power is conferred by Sec. 11A on the court.

12. On the basis of the judgments in respect of section 11A of the old Act and section 15 (1) of the new Act, it was submitted that even under sub-section (2) of section 16 , the appellate authority or the Commissioner is required to determine the rate at which the rent month to month and arrears of rent, if any, has to be deposited during the pendency of the appeal or revision. But in section 15 there is no sub-section like 16(1). Apart from that before the power u/s 15 (1) is exercised by the Court, there is no determination by any court or authority as to at what rate the rent was last paid by the tenant before the institution of the suit for eviction. So far section 16 (2) is concerned, if it is held that the appellate authority or the Commissioner may fix the rate of rent different from one determined by the Controller and direct the tenant to deposit the rent at that rate during the pendency of the appeal or the revision, in my view, sub-section (1) of section 16 shall become redundant. As already pointed out above, subsection (1) requires the tenant to deposit the rent during the pendency of the appeal or revision at the rate determined by the Controller till such dispute is finally decided by such appellate authority or the Commissioner. In this background, it is difficult, according to me, to read in sub-section (2) a power in the appellate authority or the Commissioner to direct the tenant to deposit rent during the pendency of such appeal or revision at a rate different from one fixed by the Controller. If any such power is read in the appellate authority or the revisional authority under sub-section (2) of section of 16 it is difficult to give an explanation as to what was the necessity on the part of the Legislature to introduce sub-section (1) in section 16 .

13. It is well-known rule of interpretation that Court should read different provisions of an Act in a manner that no part thereof is held to be superfluous or surplusage. In the case of Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another, it was pointed out :

It is one of the settled rules of construction that to ascertain the legislative intent, all the constituent parts of a statute are to be taken together and each word, phrase or sentence is to be considered in the light of the general purpose and object of the Act itself.

In the case of Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh, it was said :

While, no doubt, it is not permissible to supply a clear and obvious lacuna in a statute and imply a right of appeal, it is incumbent on the court to avoid a construction, if reasonably permissible on the language, which would render a part of the statute devoid of any meaning or application.

Supreme Court in the case of The J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. The State of Uttar Pradesh and Others, while applying the principle of harmonious construction observed :

In the interpretation of statutes the courts always presume that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect.

In the case of Ghanshyam Das Vs. Regional Assistant Commissioner of Sales Tax, Nagpur, it was said :

The question, therefore, is whether there is anything repugnant in the subject or context of S. 10 to limit the word "dealer" in the first part of sub-sec. (1) to dealer other than a registered dealer. Sub-section (1) is in two parts : the first part speaks of a dealer and the second part of a registered dealer and the sub-section says that both of them shall furnish the returns. If the dealer in the first part includes a registered dealer, the mention of "every registered dealer" in the second part will become redundant for a registered dealer is included in the expression "dealer". A construction which would attribute redundancy to a Legislature shall not be accepted except for compelling reasons. This redundancy disappears if the expression "dealer" in the first part excludes a registered dealer mentioned in the second part.

Similarly in the case of Hameedia Hardware Stores v. B. Mohan Lal Sowcar (1982 (2) S.C. C. 513) applying the principle of harmonious construction word "claim" was construed to mean as "requirement".

14. On behalf of the respondent-landlord it was pointed out that in sub-section (2) of section 16 in the Hindi version the expression has been used which shall mean the rate already determined by the Controller. In this connection our attention was drawn to the Legal Glossary published in the year 1988 by the Government of India, Department of Law and Justice, where the English meaning of has been shown "as determined" and not "as may be determined". It was also pointed out that in the English version of subsection (2) of section 16 , the expression sub-section has wrongly been translated as "as may be determined". It cannot be disputed that there shall be difference so far the power of the appellate or revisional authority is concerned with reference to the use of expression "as determined" or "as may be determined". If in sub-section (2) of section 16 , the expression had been "as may be determined", then it could have been held that the appellate authority or the Commissioner has power to

determine the rate of rent at which the tenant is to be directed to make deposit during the pendency of the appeal or revision. But, in view of the fact that the expression "as determined" has been used in sub-section (2) of section 16 , then, applying the principle of harmonious constructions to subsections (1) and (2) of section 16 , it can be said that in exercise of the power under sub-section (2) of section 16 the appellate authority or the Commissioner has to enquire whether the tenant has complied with the requirement of sub-section (1) of section 16 before filing the appeal and during pendency thereof. If the tenant has not deposited the arrears of rent or rent month to month, as required by the sub-section (1), the appellate authority or the Commissioner after bearing the parties determines as to what is the amount which is in arrears and then it shall direct deposit of such arrears within the time fixed and rent month to month "as determined" by the Controller during the pendency of the appeal or revision. In view of sub-section (1) of section 16 , the appellate authority or the Commissioner has not to determine the rate at which such deposit shall be made during the pendency of the appeal or revision. A Bench of this Court in the case of *Md. Enam Jalil v. The State of Bihar and ors.* (1987 PLJR 1138) came to the same conclusion. However it may be pointed out that the following line occurring towards the end of paragraph 5 of that judgment "sub-section (2) of section 16 applies when the appellate authority or the Commissioner as revisional authority finally disposes of the appeal or revision, as the case may be, against an order passed by the Controller the fair rent of the building in question" does not correctly decide the stage of the applicability of sub-section (2) of section 16 .

15. Although it is not possible for the courts to read the exact intention of the Legislature in framing any part of any enactment but according to me, the framers of the Act having made the tenant liable to deposit rent at the rate determined by the Controller during the pendency of the appeal or revision, under sub-section (1) of section 16 , have enacted sub-section (2) of section 16 with the object that before the tenant is penalised for non-deposit of any arrears of rent or rent month to month it must be determined in presence of the parties by the appellate authority or the Commissioner as to what is exact amount of such arrears of rent which the tenant has to deposit and within what time. If he fails to comply with the order passed under sub-section (2) of section 16 , then he suffers the penalty provided in that subsection.

16. It was then submitted on behalf of the petitioner that merely on the expression (as determined) occurring in sub-section (2) of section 16 , it should not be held that during pendency of appeal or revision no fresh determination by the appellate authority or the revisional authority was conceived by the framers of the Act. It was pointed out that the same expression (as determined) has also been used in sub section (1) of section 15 . It was urged that if the Civil Court has to determine the rate of rent last paid by the tenant u/s 15(1) , same although even in that sub-section same expression "as determined" occurs, then the meaning be given to that expression in context of sub-section (2) of section 16 . In other words, if the expression "as determined" occurring in section 15(1)

has been read as "as may be determined"" even for sub-section (2) of section 16 it should be read "as may be determined".

17. It is the normal rule of interpretation of statutes that the same expression used in different provisions of any enactment should be given the same meaning unless the context of any particular section requires a different meaning to be given. In the case of *Tirath Singh Vs. Bachittar Singh and Others*, it was pointed out:

But it is a rule of interpretation well-established that, "Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. (Maxwells' Interpretation of Statutes, 10th Edition, p. 229), Reading the proviso along with cl. (b) thereto, and construing it in its setting in the section, we are of opinion that notwithstanding the wideness of the language used, the proviso contemplates notice only to persons who are not parties to the petition.

In the case of *Shamrao Vishnu Parulekar Vs. The District Magistrate, Thana*, it was pointed out:

The rule of construction contended for by the petitioners is well-settled, but that is only one element in deciding what the true import of the enactment is, to ascertain which it is necessary to have regard to the purpose behind the particular provision and its setting in the scheme of the statute. "The presumption", says Craies, "that the same words are used in the same meaning is however very slight, and it is proper "if sufficient reason can be assigned, to construe a word in one part of an Act in a different sense from that which it bears in another part of an Act." (Statute Law, 5th Edn. 5, p. 159). And Maxwell, on whose statement of the law the petitioners rely, observes further on :

But the presumption is not of much Weight. The same word may be used in different senses in the same statute, and even in the same section." (Interpretation of Statutes, page 322).

Again in the case of *Bhogilal Chunilal Pandya Vs. The State of Bombay*, the Supreme Court pointed out in context with expression "statement" occurring in the different sections of the Evidence Act as follows :

The word "statement" has been used in a number of sections of the Act in its primary meaning of "something that is stated" and that meaning should be given to it u/s 157 also unless there is something that cuts down that meaning for the purpose of that section. Words are generally used in the same sense throughout in a statute unless there is something repugnant in the context.

The same view has been expressed by the Supreme Court in the cases of *Mohd. Shafi v. Additional District and Sessions Judge (VII)*, Allahabad and others (AIR

1957 SC, 836) and Shri Balaganesan Metals Vs. M.N. Shanmugham Chetty and Others, . In the case of Radha Krishna and others v. The State of Bihar and others (1988 PLJR 314) expression "High Court" although defined in the Bihar Judicial Service (Recruitment) Rules, 1955 to mean "Patna High Court" in context with other Rules was interpreted to mean any High Court in India.

18. As already pointed out, the power to determine the rate at which the rent was last paid vested in the Civil Court u/s 15(1) and the power of the appellate authority and the Commissioner u/s 16 (2) are not in the identical background or context. Sub-section (2) of section 16 has to be read along with subsection (1) of that section. There is no such limitation in sub-section (1) of section 15 . Apart from that so far section 15 is concerned, there is no prior determination of the rate of rent at which it was last paid, by any authority or court, whereas in case of section 16 the rate of rent has already been determined by the Controller under the provisions of the Act itself. As such the expression (as determined) in subsection (2) of section 16 has to be read in context of sub-section (1) of section 16 and has to be given the literal meaning "as determined" and not "as may be determined", whereas the same expression (as determined) occurring in section 15(1) has to be read in view of the judicial pronouncements and in context of that sub-section "as may be determined".

19. It may be mentioned that one of the Counsel appearing for the petitioner while urging that under sub-section (2) of section 16 , the appellate authority or the Commissioner has power to determine a rate of rent different from one determined by the Controller pointed out that if that interpretation is not given to sub-section (2) of section 16 it will lead to anomalous position in a case where the tenant prefers the revision before the Commissioner against the order of the appellate authority allowing the appeal of the landlord against the order of the Controller. In such a case whether the tenant will deposit rent at the rate fixed by the Controller or the appellate authority ? It is true that section 16 has not said anything specifically in respect of such a situation. But when sub-section (1) of section 16 itself says in clear and unambiguous words that during the pendency of the application for revision before the Commissioner against an order of appellate authority the tenant shall be required to deposit rent at the rate fixed by the Controller, then it has to be held that although the appellate authority might have enhanced the rate of rent in respect of the premises in question on an appeal filed on behalf of the landlord, the tenant shall deposit during the pendency of the revision before the Commissioner against such order of the appellate authority rent at the rate determined by the Controller.

20. On behalf of the petitioner it was submitted that the Controllers, who are the Executive Officers, pass orders determining the rate of rent of the building in question, sometimes without issuing any notice or without having jurisdiction over the area in which the building is situated and if a tenant prefers an appeal against such order, he will have to deposit the rent at the rate fixed by such order during the pendency of appeal. In my view, in a case where rent has been

fixed by the Controller at a rate shocking to the conscience of the Court without issuance of any notice to the tenant or without having jurisdiction over the area where the building is situated the persons aggrieved may invoke the writ jurisdiction of this Court and in appropriate case this Court may consider entertaining such application without compelling the tenant to file an appeal before the appellate authority. Apart from that, in such a case, even if the defence against fair rent order is struck off, at the stage of final hearing, if the appellate authority is satisfied that such fair rent has been determined by the Controller, without issuing any notice to the tenant or having no jurisdiction over the area in question such appeal shall normally be allowed irrespective of the fact, whether defence against such fair rent order has been struck off or not. It need not be pointed out that section 16 applies during the pendency of the appeal. Even in an appeal where the defence against fair rent order has been struck off due to non-deposit of rent, the appeal has to be heard and disposed of by the appellate authority after ignoring the defence set up by the tenant against the rate of rent claimed by the landlord. What is the fate of a title suit for recovery of possession of the house filed by the landlord under the Act of 1947 after the defence against ejectment has been struck off was examined by a Full Bench of this Court in the case of Mahabir Ram v. Shiv Shanker Prasad and others (AIR 1968 Patna 415 : 1968 PLJR 75). It was held that on the failure of the tenant to deposit the rent as directed u/s 11A defences which are open to the defendant as tenant against his ejectment only have to be struck off; in other words, his defence qua tenant only would be struck out. Similarly, due to non-compliance of any direction given u/s 16 (2) by the appellate authority or the revisional authority the defence against the fair rent order is to be struck off.

21. During the hearing of this application, on behalf of the landlord-respondent, it was also urged that on proper construction of subsection (1) of section 16 it should be held that a tenant is not entitled to file an appeal or revision unless he has complied with the requirement of said sub-section, i.e., has deposited the arrears of rent, if any, and rent month to month at the rate fixed by the Controller and even in cases where appeals or revisions have been filed and entertained they should be dismissed on the ground of non compliance of sub-section (1) of section 16 itself. It has already been pointed out above that section 16 prescribes the procedure for deposit of rent during the pendency of the appeal or revision. Sections 24 and 26 contain the provisions regarding filing of the appeal and revision and procedure for their disposal. Sub-section (2) (a) of section 24 enables the appellate authority to summarily dismiss the appeal after perusing the memo of appeal and hearing the appellant, if necessary. Sub-section (2) (b) of section 24 enables the appellate authority to call for the records and after examining such records and, if necessary, making such further enquiry as he thinks fit to decide the appeal. u/s 26, the Commissioner may revise any order passed by the Controller or the appellate authority on appeal under the said Act. None of the aforesaid sections prescribes that unless the tenant deposits the arrears of rent prior to the date of filing of the appeal or

revision any such appeal or revision shall not be entertained or shall be dismissed on that ground alone. There are enactments where deposit of the part of the amount which has been directed to be deposited by the original court or authority is a must before an appeal can be entertained. Reference in this connection may be made to proviso to section 60 (1) of the Bihar and Orissa Public Demands Recovery Act which says that no appeal shall be entertained unless 40% of the amount determined is paid. Similarly, section 249 (4) of the Income Tax Act, 1961 lays down that no appeal shall be admitted unless the assessee has paid the amount of the tax or exempted by the appellate authority from paying the same. Section 45 (3) of the Bihar Finance Act, 1981 says that no appeal shall be admitted unless 20% of the tax assessed or entire amount of admitted tax is paid. In view of section 129E of the Customs Act, 1962, any person desirous of preferring appeal is required to deposit the duty demanded or penalty levied unless otherwise exempted by the appellate authority. There is no such provision in section 24 or section 26 of the Act. The learned Counsel appearing for the landlord-respondent placed reliance on two judgments of the Supreme Court in the cases of Navinchandra Chhotelal v. Central Board of Excise and Custom, & ors, AIR 1981 SC, 2280) and Vijay Prakash D. Mehta and Another Vs. Collector of Customs (Preventive), Bombay, . Both the aforesaid cases related to the Customs Act and in that connection it was said that deposit of the duty demanded was a necessary condition to be fulfilled before an appeal could be entertained. As already pointed out in view of section 129E of the Customs Act the person desirous of preferring appeal is required to deposit the duty. In the present Act with which we are concerned, there being no such condition for filing an appeal or revision against the order of the Controller or the appellate authority, it is difficult to hold that unless the tenant deposits the arrears of rent at the rate fixed by the Controller, either he is not entitled to file an appeal or revision or any such appeal or revision having been entertained is liable to be dismissed on that ground alone. Sub section (1) of section 16 has enjoined the tenant to deposit rent at the rate fixed by the Controller during the pendency of the appeal or revision but no consequence for non-compliance of sub-section (1) of section 15 has been provided. The consequence of striking off the defence against the fair rent order has been provided only in subsection(2) of section 16 . In other words, the appellate authority or the Commissioner can pass an order that the defence against the fair rent order to be struck off only when the tenant does not comply with the order of the appellate authority or the Commissioner passed under sub-section (2) and not for non-compliance of the requirement of sub-section (1) of section 16 .

22. There is another aspect of the matter. If it is held that for non-compliance of sub-section (1) of section 16 the appeal or revision itself is liable to be rejected, then it will lead to an anomalous position. For non-compliance of sub-section (1) of section 16 , i.e., failure to deposit the arrears of rent at the rate determined by the Controller, before filing of the appeal or revision, the appeal or revision itself has to be dismissed, but, if the tenant in spite of the order passed under

sub-section (2) of section 16 , after hearing the parties, makes default in compliance of any such order, only his defence against the fair rent order is to be struck off and the appeal or revision remains pending. In my view, the appellate authority or the Commissioner cannot refuse to entertain an appeal or revision or dismiss the same on the ground that before filing such appeal or revision there has been non-compliance of sub-section (1) of section 16 .

23. Accordingly, the question referred to the Full Bench is answered as follows :--

(1) whenever the tenant prefers an appeal against an order of the Controller "determining fair rent in respect of any building or premises or makes an application for revision to the Commissioner against the order of the appellate authority he is required to deposit the rent at the rate determined by the Controller month to month by the fifteenth day of the following month, together with arrears, if any, during the pendency of the appeal or revision, as the case may be;

(2) The appellate authority or the Commissioner has to hear both the parties to determine as to whether the tenant has complied with the requirement of subsection (1) of section 16 of the Act. If it is found that the tenant has not deposited the arrears of rent at the rate determined by the Controller, then the appellate authority or the Commissioner has to direct the tenant to deposit the said amount within the time fixed by the appellate authority or the Commissioner, as the case may be, and to direct to go on depositing the rent month to month by the fifteenth day of the following month at the rate determined by the Controller;

(3) If there is non-compliance of the order passed by the appellate authority or the Commissioner in exercise of the power under sub-section (2) of section 16 , then the defence against the fair rent order has to be struck off and the appeal or revision has to be heard and disposed of u/s 24 or 26 as if the tenant had not put up any defence against the claim of the rate of rent by the landlord before the Controller.

Now this writ application along with analogous writ applications should be listed before a Division Bench for disposal in the light of the view expressed above.