
(1993) 06 PAT CK 0008
In the Patna High Court
Case No : C.W.J.C. No. 9 of 1993

I.T.C Ltd.

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 29-06-1993

Acts Referred:

Citation : (1993) 06 PAT CK 0008

Judgement

Radha Mohan Prasad, J.—The petitioner, which is a limited Company, has prayed for quashing of the order dated 29-1-1988 of the Land Reforms Deputy Collector, Munger (respondent No. 2) as contained in Annexure 16 to the writ application, passed in Rent Fixation Case No. 1/76-77 levying Salami, cases etc. Purporting to be under Sections 5 and 7 read with Section 13 of the Bihar Land Reforms Act, 1950 (hereinafter referred to as "the Act") since the date the Act came into force i.e., 25-9-1950 and the demand notice dated 21-9-1992 issued by the Anchal Adhikari, Sadar Munger, as contained in Annexure 14 to the writ application, whereby the petitioner is required to pay Rs. 1,46,45,544 towards Salami, arrear rent etc. Upto the year 1986-87 in terms of the aforementioned order dated 29-1-1988 in Rent Fixation Case No. 19/86-87 within a fortnight with the threat that if they failed to pay, the same would be recovered under the provisions of the Bihar and Orissa Public Demand Recovery Act, 1940.

2. In Short, the case of the petitioner is that the petitioner Company which carries on the business of manufacturing and selling of cigarettes and smoking tobaccos set up the factory at Basdeopur in Munger in the early part of this century upon purchasing Zamindari/properties interest in the land in question. The predecessors-in-interest of the said Company also set up a residential complex by taking two bungalows with land appertaining thereto and also a vacant land on a perpetual Sub-lease in 1912 and by purchasing proprietary interest on the adjoining lands in 1925 for residence of its officials free of rent and the same is described as park land. It has also set up a colony for the residence of its workers at Shakarpur upon purchasing a dwelling house with-out-houses and other structures, garden, orchard and also two pieces of raiyoti jote

transferable land in the years 1955 and 1958.

3. Under a notification dated 26-1-1955 issued in exercise of the power under the Act 30 of 1950 intermediary interest of the proprietor, tenure-holder, under tenure-holder and trustees in any estate or tenure in the district of Munger stood transferred and vested in the State of Bihar. But by the provisions of the Act homestead land and the land of the factory remained in the occupation of the company as the same has been deemed to have been settled with the Company as being the tenant of the State of Bihar, in terms of Section 7 of the Act subject to payment of fair and equitable ground rent as may be determined by the Collector in the prescribed manner.

4. It is stated that an ad interim compensation case bearing No. 804 of 1955-56 was started for the purpose of Computation of compensation payable under the Act and rent for the said purpose are roughly assessed at the rate of Rs. 25 per Bigha. It appears that a Rent Fixation case No. 1/76-77 was started on the basis of an application dated 23-2-1973 filed by the petitioner before the Anchal Adhikari, Sadar Munger praying for determination of rent in terms of the provisions of the Act in which by order dated 18-8-1987 the annual current land rent etc. with effect from 1987-88 was fixed by the Deputy Collector, Land Reforms, Sadar Munger and the Company was called upon to submit objection, if any, regarding the rent so fixed at the commercial and industrial rates latest by 18th September, 1987 for which notice was directed to be issued. A photo copy of the certified copy of the said order has been annexed as Annexure 4 to the writ application. The petitioner Company filed a petition before the Land Reforms Deputy Collector, Sadar Munger in Rent Fixation case No. 1 of 1976-77.

5. In the said petition the petitioner took objection that the aforesaid notice dated 8-9-1987 is illegal and without any authority of law inasmuch as under the Act only fair and equitable ground rent can only be fixed in respect of factory land u/s 7 of the Act and as rent had already been fixed while determining the compensation payable to the petitioner, the question of refixation of the rent with respect to the same land at the commercial and industrial rate is wholly untenable and without authority of law. As regards park land or the homestead land, no rent is payable as par Section 5(1) of the Act as the petitioner was not using the same for the purpose of letting out on rent. According to the petitioner, as the assessment of annual rent, arrear rent, Salami etc. were made without disclosing the basis and also the materials considered by respondent No. 2 in determining the value of land at Rs. 40,050 per katha, the petitioner filed the aforesaid objection and called upon the respondent No. 2 to disclose them to enable the petitioner to deal with the same.

6. Further the case of the petitioner is that later at the time of hearing in the aforementioned rent fixation case, it was reiterated on his behalf that respondent No. 2 cannot proceed with the hearing without affording opportunity to the petitioner to deal with the documents/reports relied upon by him. Thereafter neither the petitioner was afforded with any opportunity nor any order or any

notice was ever served upon them in furtherance of the aforesaid order dated 18-8-1987 itself, and as such it had reasonably believed that the matter has been dropped. However, later on 22nd October. 1990 the petitioner was informed that a proceeding was initiated against it for levy of Salami and fixation of rent as per Government Circular No. 1452-A dated 21-5-1983 under which it was provided that the raiyots holding the land for agricultural requirements but using the same for commercial purposes, the Government either dispossess or may levy Salami equivalent to prevailing market value of land and revise the rent at the rate of 20% of such Salami (Premium), As the said circular was not applicable to the petitioner, a reply was sent to the Anchal Adnikari, Sadar Munger (respondent No. 3) to drop the proceedings Respondent No. 3 without dealing with the contentions raised on behalf of the petitioner in its reply issued a show-cause as to why a Salami of Rs. 57,20,000/- and annual rent at the rate of Rs. 2,86,000/- for 37 years amounting to Rs. 1,58,82,000/- should not be realised from the petitioner in respect of the factory land for conversion of the same from agricultural to non-agricultural use.

7. On 24-6-1991 the petitioner filed a detailed show-cause and the matter was heard but according to the petitioner without dealing with any of the points respondent No. 3 again issued notice to the petitioner requiring it to pay commercial rent for 36 years at the rate of Rs. 2,80,000/- amounting to Rs. 1,00,80,000/- with respect to the same land. On 21-1-1992 another notice was sent to the petitioner that the fair ground rent for its factory land had already been determined and that the proceedings for determination of commercial rent for the factory land was going on in terms of the aforementioned Government circular dated 26-5-1983, The petitioner also sent a reply on 27-2-1992 that the said proceeding is without any authority as u/s 7 of the Act the Collector does not have any power to revise the same nor there is any provision in the Act for levy of commercial rent and further, the Government circular cannot override the provisions of the Act. Further, it was reiterated that the said circular has no application to the petitioner's land and accordingly, respondent No. 3 was requested to drop the proceedings. Thereafter the matter was heard by the Anchal Adhikari and while the order was awaited the petitioner received the impugned Memo dated 21-9-1992 requiring it to pay a sum of Rs. 1,46,45,544/- being Salami/arrear commercial rent upto 1986-87 as per order dated 29-1-1988 of the Deputy Collector Land Reforms (respondent No. 2) besides the demand of payment of commercial rent within 15 days, failing which the threat as aforementioned. Thereafter on 1-10-1992 the petitioner wrote to respondent No. 3 to withdraw the said demand but when no reply was received nor any document/order was furnished to the petitioner and however, when they learnt about the order dated 29-1-1988, they obtained a certified copy, which is said to have been made available to the petitioner on 16-11-1992, whereafter the present application has been filed.

8. This application was admitted on 11-1-1993 and the Government pleader accepted notice on behalf of all the respondents. While admitting the petition the

State was directed to file its counter-affidavit by 1st February, 1993 and the reply thereto on behalf of the petitioner by 12th February, 1993 and the case was directed to be placed for final hearing on 15th February, 1991 with an interim order passed. However, no counter-affidavit has been filed in this case and the matter was heard.

9. Mr. Shanti Bhushan, learned Senior Counsel appearing for the petitioner, raised number of points in this case questioning the validity of the impugned levy of Salami, rent, cesses etc. Under the impugned orders. According to him, there cannot be two different determinations of rent; one for the purpose of compensation and another for the purpose of realisation of rent. Further, he submitted that the exercise of power under Sections 5, 6, 7 and 22 of the Act is integral.

10. Section 5 of the Act provides that all homesteads comprised in an estate or tenure which are in possession of an intermediary would be deemed to be settled by the State with the intermediary and he shall be entitled to retain possession of the lands comprising in such homestead and to hold it as a tenant under the State free of rent. However, if such homestead are used by the intermediary for the purpose of letting out on rent, the same shall be subject to payment of such fair and equitable ground rent as may be determined by the Collector in the prescribed manner.

11. In terms of Section 7 of the Act normally such buildings or structures which are used as factories or Mills for the purpose of trade, manufactures or commerce before the first day of January, 1946, the same would be settled by the State with such intermediary and he shall be entitled to retain possession of such buildings or structures together with the land on which they stand, as a tenant under the State subject to payment of such fair and equitable ground rent as may be determined by the Collector in the prescribed manner. Proviso appended to Sub-section (1) of Section 7 provides that in respect of industrial undertaking fair and equitable rent shall be determined by the State Government not only in respect of the lands or buildings and structures but also with respect to the lands on which they stand. Sub-section (3) of Section 7, however, entitles the ex-intermediary to retain possession of such buildings or structures together with the land on which it stands as a tenant subject to payment of rent if the State Government is satisfied that such building or structure was not constructed or was used for the aforesaid purposes with the object to defeat any of the provisions of the Act. Section 5 provides for fixation of fair and equitable rent in respect of land which are covered only by the proviso appended to Sub-section (1) of Section 5 of the Act.

12. Rule 7 of the Bihar Land Reforms Rules provides for the manner in which fair and equitable rent is to be determined. The other provisions which are relevant for the purpose of this case are Sections 22, 23 and Rule 7-G of the aforesaid Rules.

13. Learned Counsel for the petitioner also contended that the lands which are being used upon construction of the building thereon as a residential complex for the officials of the Company posted for the time being in Munger free of rent should be deemed to have been settled with the Company as tenant of the State of Bihar free of rent in terms of Section 5(1) of the Act. According to him, an employer permitting an employee to occupy a quarter will not amount to letting out under the Bihar Buildings (Lease, Rent and Eviction) Control Act rather the same would be deemed to be in the occupation of the Company itself. He also submitted that there was no material/evidence even to show that the building of the factory was let out to its employees and the rent was being realised which would attract the proviso to Sub-section (1) of Section 5 of the Act. In this regard he placed reliance on the Supreme Court decision in the case of Kanpur Sugar Works Ltd. Vs. State of Bihar and Others, , wherein the Supreme Court upon construction of Sections 5 and 7 of the Act held as follows :

It is clear from a bare perusal of Sub-section (1) of Section 7 that the buildings which are primarily used as offices or cutcheries referred to in Clause (a) of Section 4 as were in the possession of an intermediary at the commencement of the Act are excluded from the terms of Section 7(1). Again Sub-section (1) only applies to such buildings or structures together with the lands on which they stand which are used as Golas, Factories or Mills for the purpose of trade, manufacture or commerce or used for storing grains or keeping cattle or implements for the purpose of agriculture. The expression employed" by the Legislature is "used as golas, factories or mills" and not "used for golas, factories or mills." The expression "lands on which they stand" may include the land which is necessary for the efficient user of the building for the purpose for which it is intended to be used. We are unable, however, to hold that because a factory has, for the benefit of the workmen and managerial staff working in the factory, constructed buildings used as bungalows quarters for employees, clubs, kitchens, garrage, dispensary, rest house, out-houses etc. but which are not used directly as factory or mill buildings, the building would be deemed to fall within Section 7(1) as buildings in the possession of an intermediary and used as golas, factories or mill. In our judgment, these lands are homestead and are claimable by an intermediary u/s 5(1), if they are used for the purpose of letting out they would be liable to pay fair and equitable ground rent under proviso to Sub-section (1) of Section 5.

The Supreme Court also held that the definition of factory in Factories Act,1948, cannot be taken into consideration for the purposes of construction of the word "factory" as occurring in Sub-section (1) of Section 7 of the Act as the scheme and object of the Factories Act and the Act are different.

14. Lastly, it was submitted by Mr. Shanti Bhushan that even the quantum assessed is not based on any valid material and that too has been determined without giving any opportunity to the petitioner in that regard.

15. Learned Advocate-General appearing for the State very fairly con ceded that

the fair rent having been fixed by the L.R.D.C., who is not the competent authority, the impugned order/demand is fit to be quashed on this ground alone. He also conceded that the circular contained in Annexure 7-A to the writ application, has no application. However, he contended that the compensation has not been finally determined as would appear from Order No. 5, contained in Annexure 1. He referred to page 53 of the brief wherein it is mentioned that the rent roughly assessed. He, however, further contended that in any case even if the compensation has been fixed that cannot close the chapter for the determination of fair rent in terms of the provisions of the Act.

16. From the facts of the present case I find that there is nothing on the record to show that the compensation and/or rent had been finally fixed by the competent authority under the Act, In that view of the matter as also in view of the fair stand of the learned Advocate-General, in my opinion, it would not be proper to consider the submissions advanced by Mr. Shanti Bhushan, in detail and give any verdict on them. The presumption is that the authority empowered to fix fair and equitable rent would act in accordance with law.

17. Accordingly, the impugned orders, as contained in Annexures 16 and 14 to the writ applications, are hereby quashed and the respondents authorities are directed to finalise the determination of the compensation as well as fixation of the rent in respect of the lands/properties of the petitioner in accordance with law and after giving due opportunity to the parties to place their case within a period of six months from the date of communication/production of a copy of this judgment/order. The petitioner will be entitled to raise all contentions and bring other materials in support of its case. Similarly, the State of Bihar would also be entitled to bring all relevant materials on record to enable the Collector to take into consideration the same and pass appropriate orders in accordance with law. It goes without saying that if the petitioner has deposited any amount towards rent pursuant to the interim order dated 11-1-1993, the same would be adjusted upon determination of the quantum of fair and equitable rent payable by it to the State of Bihar.

18. With the aforementioned observation and directions, the writ application is allowed.

S. B. Sinha, J. I agree with the operative portion of the judgment prepared by my learned brother but I would like to add a few words of mine. Admittedly the petitioner was an ex-proprietor. Its estate, therefore, vested in the State of Bihar in terms of the provisions of the said Act. The lands which, however, came within the purview of the provisions of Sections 5, 6, and 7 of the said Act, were saved from vesting subject to the fixation of rent, if any. Section 5 of the Act provides that all homesteads comprised in an estate or tenure which are in possession of an intermediary would be deemed to be settled by the State with the intermediary and he shall be entitled to retain possession of the lands comprising in such homestead and to hold it as a tenant under the State free of rent. However, if such homestead are used by the intermediary for the purpose of

letting out on rent, the same shall be subject to payment of such fair and equitable ground rent as may be determined by the Collector in the prescribed manner.

19. In terms of Section 7 of the Act normally such buildings or structures which are used as factories or Mills for the purpose of trade, manufactures or commerce before the first day of January, 1946, the same would be settled by the State with such intermediary and he shall be entitled to retain possession of such buildings or structure together with the land on which they stand, as a tenant under the state subject to payment of such fair and equitable ground rent as may be determined by the Collector in the prescribed manner. Proviso appended to Sub-section (1) of Section 7 provides that in respect of industrial undertaking fair and equitable rent shall be determined by the State Government not only in respect of the lands or buildings and structures but also with respect to the lands on which they stand. Sub-section (3) of Section 7, however, entitled the ex-intermediary to retain possession of such buildings or structures together with the land on which it stands as a tenant subject to payment of rent if the State Government is satisfied that such building or structure was not constructed or was used for the aforesaid purposes with the object to defeat any of the provisions of the Act. It is not the case of the state that Sub-section (3) of Section 7 of the Act has any application in the facts and circumstances of this case. Section 5 provides for fixation of fair and equitable rent in respect of land which are covered only by the proviso appended to Sub-section (1) of Section 5 of the Act.

20. Rule 7 of the Bihar Land Reforms Rules provides for the manner in which fair and equitable rent is to be determined. To other provisions which are relevant for the purpose of this case are Sections 22, 23 and Rule 7-G.

Sections 22 and 23 of the Act reads as follows :-

22. "Previous agricultural year" and "gross asset" defined,-For the purposes of the Chapter: (1) "Previous agricultural year" immediately preceding that in which the date of vesting falls ;

(2) "gross assets", when used with reference to (an intermediary means the aggregate of the rents, including all cesses, which were payable in respect of the estate or tenures of such intermediary) for the previous agricultural year,-

(a) by the immediately subordinate tenant, in case such, immediately subordinate tenant is a tenure-holder of a permanent or resumable tenure ;

(b) by the raiyats, in all other cases and includes-

(i) the aggregate of the rents determined in accordance with the provisions of the proviso to Sub-section (1) of Section 5, and Sections 6 and 7 in respect of the lands in the possession of the (intermediary) referred to in the said provisions ;

- (ii) rents determined in the prescribed manner in respect of gairmazrua or gairmazrua mailk or parti land appertaining to such estates or tenures ;
- (iii) rent of lands purchased by (an intermediary) in execution of decree for arrears of rent (such lands not being in khas possession of such proprietor or tenure-holder or settled with any raiyat) at the rate payable before such sale ;
- (iv) annual rent determined in the prescribed manner of buildings or portions of buildings used primarily as offices or cutcheries for the collection of rents ;
- (v) rents to be determined in the prescribed manner of lands in respect of which an order for the partial or entire remission of rent has been passed under Clause (c) of Sub-section (1) of Section 112-A of the Bihar Tenancy Act, 1885 (8 of 1985) or under Clause (c) or Clause (d) of Section 33-A of the Chotanagpur Tenancy Act, 1908 (Ben. Act 6 of 1908) and is in force in the agricultural year preceding the agricultural year in which the date of vesting falls ;
- (vi) gross income of the previous agricultural year from fisheries trees, jalkars, ferries, hats, bazars (Melas) and sairati interests.

* * * *

- (vii) gross income from forests calculated on the basis of the average gross annual income of twenty-five agricultural years preceding the agricultural year in which the date of vesting falls, which in the opinion of a Forest Officer, not below the rank of a Divisional Forest Officer, to be appointed in this behalf by the State Government, the forests would have yielded, if they had been placed during the said period of twenty-five years under the management of the State Government under any law for the time being in force relating to forest ;
- (viii) gross annual income of previous agricultural year from any other interest, appertaining to an estate or tenure vesting in the State and not expressly mentioned in Sub-Clauses (i) to (vii).

Computation of net income.-(I) For the purposes of preparing Compensation Assessment-roll, the net income of (an intermediary) shall be computed by deducting from the gross asset of such (intermediary), as the case may be, the following namely :-

- (a) any sum which was payable as land-revenue or rent including cesses to the state Government or to the immediately superior landlord. as the cess may be, in respect of the State or tenure of such (intermediary) for the previous agricultural year :

provided that where rent of a holding comprised in such estate or tenure has been Commuted into cash rent and there has been no re-valuation of the cess payable in respect of that estate or tenure, the cess payable under this clause shall be determined on the basis of the commuted rent:

provided further that if any land comprised in such estate or tenure is lost by

diluvion or is covered with water so as to make such land uncultivable, the cess payable under this clause shall be reduced by an amount which bears to the cess of the entire Estate or tenure the same proportion as the area lost or covered bears to the area of the entire estate or tenure ;

(b) any sum which was payable by such (intermediary) as agricultural Income Tax in respect of any agricultural derived from such estate or tenure for the previous agricultural year ;

(c) any sum which was payable by such (intermediary) as income- tax in respect of any income derived from such estate or tenure, other than royalties, for the previous agricultural year ;

provided that the Income Tax payable under this clause shall be determined in accordance with the rate of assessment which would have been applicable if the (intermediary) has no income other than the income derived from such estate or tenure ;

(d) any sum which was payable as chankidari tax or municipal tax in respect of any building or part of building used primarily as office or outchery for the management of such estate or tenure ;

(e) cost of management of such estate or tenure at the following rates namely :-

Amount of gross asset Rate (i) where the gross asset does 5 per centum of such not exceed Rs. 2,000 gross asset; (ii) where the gross asset ... 7-1/2 per centum of exceeds Rs. 2,000 but such gross asset; does not exceed Rs. 5,000 (iii) where the gross asset ... 10 per centum of such exceeds Rs. 5,000 but gross asset; does not exceed Rs. 10,000 (vi) where the gross asset ... 12-1/2 per centum of exceeds Rs. 10,000 but does such gross asset; not exceed Rs. 15,000 (v) where the gross asset Not less than 15 and exceeds Rs. 15,000 more than 20 per centum of such gross assets:

Provided that the deduction on account of the cost of management referred to in this clause, shall not in any case have the effect of reducing the net income of the intermediary, specified in any entry in Sub-clause (ii) to (iv) thereof, to an amount below the net income of the intermediary specified in the entry mentioned in Sub-clause (i) to (v) respectively ;

Rule 7-G of the Bihar Land Reforms Rules, reads as follows :

Rule 7-G. Fixation of fair and equitable rent or ground rent under Rules 5, 6 and 7.-The Collector shall consider the report of enquiry held under Rule 7-E or 7-F and pass an order fixing the fair and equitable rent or ground rent under Rules 5, 6 and 7, as the case may be, if it is proved to his satisfaction that :-

(i) The homesteads referred to in the proviso to Sub-section (1) of Section 5 were used by the outgoing proprietor or tenure-holder for the purpose of letting out on rent.

(ii) The lands referred to in Sub-section (1) of Section 6 were in khas possession of the outgoing proprietor or tenure-holder on the date of vesting.

(iii) The proprietor's private lands or privileged lands or other lands let out under a temporary lease, referred to in Clause (a) or (b) of Sub-section (1) of Section 6, were in the possession of temporary lease on the date of vesting.

(iv) The lands on the possession of a mortgage, referred to in Clause (c) of Sub-section (1) of Section 6, were in the possession of such mortgage on the date of vesting.

21. The question as to whether in a case where the intermediary possessed not only the buildings and structures which are used for the factories but also buildings or structures which are used for providing residential accommodation to its employees, came up for consideration before the Supreme Court of India in *Kanpur Sugar Works Ltd. Vs. State of Bihar and Others*, . The Supreme Court upon construction of Sections 5 and 7 of the Act held as follows :

It is clear from a bare perusal of Sub-section (1) of Section 7 that the buildings which are primarily used as offices or cutcheries referred to in Clause (a) of Section 4 as were in the possession of an intermediary at the commencement of the Act are excluded from the terms of Section 7(1). Again Sub-section (1) only applies to such buildings or structures together with the lands on which they stand which are used as golas, factories or Mills for the purpose of trade, manufacture or commerce or used for storing grains or keeping cattle or implements for the purpose of agriculture. The expression "employed" by the Legislature is "used as golas, factories or mills" and not "used for golas, factories or mills". The expression "lands on which they stand" may include the land which is necessary for the efficient user of the building for the purpose for which it is intended to be used. We are unable, however, to hold that because a factory has, for the benefit of the workmen and managerial staff working in the factory, constructed buildings used as bungalows quarters for employees, clubs, kitchens, garrage, dispensary, rest house, out-houses etc. but which are not used directly as factory or mill buildings, the building would be deemed to fall within Section 7(1) as buildings in the possession of an intermediary and used as golas, factories or mill. In our judgment, these lands are homestead and are claimable by an intermediary u/s 5(1), if they are used for the purpose of letting out they would be liable to pay fair and equitable ground rent under proviso to Sub-section (1) of Section 5.

The Supreme Court held that the definition of factory in Factories Act, 1948, cannot be taken into consideration for the purposes of construction of the word "Factory" as occurring in Sub-section (1) of Section 7 of the Act as the Scheme and object of the Factories Act and the Bihar Lands Act are different. The Supreme Court, thereafter, held as follows :

The revenue authorities erred in holding that the entire area of 83 Bighas odd was liable to be assessed to rent u/s 7(1) of the Act. Undoubtedly an area of 12

bighest 9 kathas 7 dhurs is liable to be assessed to rent u/s 7(1) of the Act. If there are other lands which strictly fall within the expression "buildings or structures together with the lands" used as golas, factories or mills for the purpose of trade, manufacture of commerce it will be open to the Collector to assess those lands to rent u/s 7(1), but the lands not covered by buildings and structures used for golas, factories or mills will be governed by Section 5(1) of the Act.

* * * * * We are, on the materials on record, unable to specify the buildings and lands falling within Section 7 of Act for the purpose of determination of assessment of rent. The evidence on the record before us is not clear as to what is truxtures or buildings stand on the lands in the outer enclosure and the purpose for which they are used. We are also not clear as to the precise meaning of the expression "golas" used in Section 7 the expression not being defined in the Act.

22. It is, therefore, clear that the authority empowered to fix fair and equitable rent has to keep in mind the aforementioned decision of the Supreme Court and for that purpose carve out the areas which fall within the purview of Section 5 and the areas which would fall within the purview of Section 7 of the Act. Even in relation to the fixation for fair and equitable rent in respect of the lands where the buildings and structures stand which have been given by the petitioner to its employees by way of residential accommodation, the authority has to arrive at a finding on the basis of the materials which may be brought on record by the petitioner or by the State as to whether the petitioner had been realising any rent from its employees or not so as to attract the proviso of Sub-section (1) of Section 5 of the Act.

23. It has been conceded by the learned Advocate-General that fair and equitable rent has to be determined in terms of the provisions of the Bihar Lands Reforms Act and not in terms of the directives issued by the State of Bihar from time to time under the Khas Mahal Manual. In this view of the matter, there cannot be any doubt that the impugned order which is primarily based on the circular letter dated 21-5-1983 (Anneuxre 7/A) must be held to be vitiated in law, as the same applies to the management of Khas Mahal Estate.

24. The competent authority should also bear in mind that the provisions of the Bihar Land Reforms Act, 1950 do not contemplate realisation of any Salami. It has further to be borne in mind that the fair and equitable rent has to be fixed Keeping in view the rent as was prevailing on the date of vesting and not on the date when the order is to be passed. It has further to be borne in mind by the authorities fixing such fair and equitable rent that once such fair and equitable rent is fixed, the same is not liable to any enhancement in future.

25. The rent calculated for the purpose of payment of compensation to the petitioner may have relevance inasmuch as there cannot be two different sets of norms; one for the purpose of fixation of the fair rent and another for the

purpose of payment of compensation to the ex-intermediary under the said Act by the State. For the purpose of fixation of compensation, the rent payable under the Bihar Tenancy Act may also be taken into consideration.

26. In this case, it appears that whereas on 23-5-1957 fair rent at the rate of Rs. 25 per bigha was roughly assessed for the purpose of payment of compensation and Rs. 30 per bigha was fixed on 17-11-1973, subsequently a much higher rates of rent was recommended by different authorities at different subsequent stages. I do not suggest that the rent of Rs. 25 per bigha as was recommended by the Karmachari is binding upon the Revenue Department but what requires to be considered at the hands of the assessing authority is that it should not take into consideration any material which would not be relevant for determining the fair rent. At the cost of repetition it may be mentioned that what is relevant is the prevailing rate of rent at the time when the estate vested in the State of Bihar and not on the date when the order was passed.

27. In *Mostt. Bibi Sayeda v. State of Bihar* 1985 BLJR 66 a Full Bench of this Court following the decision in *Kanpur Sugar Works v. State of Bihar*, (supra) held that a building which was used a dwelling house would be homestead and would include, compound, orchard and out building etc. The Full Bench held as follows :

I shall for a moment contend that in order to constitute homestead, the ex-intermediary must have been residing personally in all those buildings which may be claimed as homestead. The requirement of law would be fulfilled if the building is of such a character that it may be used for residential purpose, no matter whether the proprietor resided in it all the year round or at intervals. A proprietor would thus be capable of owning any number of buildings.

28. A learned Single Judge of this Court in *Union of India (UOI) v. Bhuaneshwar Prasad* 1986 BLJR 45 relying upon the decision of the Supreme Court in *Brij Kishore Prasad Singh and Others Vs. Jaleshwar Prasad Singh and Others*, held that when an ex-landlord has allowed the post office to function on his land without charging any rent, the same is also saved from vesting and the ex-landlord becomes the settlee also in respect of such land as charged or not charge of any rent is wholly irrelevant for the purpose of the said Act.

29. It appears from the impugned order that Rs. 40,000 per bigha has tentatively been held to be the fair and equitable rent.

30. It therefore, direct the Collector under the Act to keep in mind the aforementioned principles for the purpose of determination of fair and equitable rent along with all other relevant factors and proceed to pass an appropriate order in accordance with law.

31. The petitioner before the Collector shall be entitled to raise all contentions and bring other materials in support of its case. Similarly, the State of Bihar would also be entitled to bring all relevant materials on record to enable the Collector to take into consideration the same and to pass appropriate orders in

accordance with law. The petitioner has deposited rent at the rate of Rs. 200 per bigha pursuant to our interim order dated 11-1-1993. The said amount shall be accounted for and necessary adjustment be given upon determination of the quantum of fair and equitable rent payable by it to the State of Bihar.