
(2003) 02 JH CK 0077
In the Jharkhand High Court
Case No : WPC No. 2241 of 2002

Kedar Nath Singh

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 04-02-2003

Acts Referred:

Citation : (2003) 2 JCR 65

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

Bench : Single Bench

Advocate : Krishna Murari, for the Appellant; Vandana Singh, JC to SC III, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—In this writ petition the petitioner prays for issuance of writ of mandamus directing the respondents to make payment of arrears of rent in respect of the premises occupied by the respondents.

2. Petitioner's case is that the respondents have taken the premises in question on rent where the office of respondent No. 5 namely "Rural Electric Supply Sub Division" is functioning. It alleged that the Sub Divisional Magistrate fixed the rent at the rate of Rs. 1150/- p.m. and respondent No. 3, Superintending Engineer Daltonganj Electric Supply Circle, recommended for payment of rent. Accordingly rent for the period 10.1.1991 to 31.3.1994 and 1.4.1994 to 31.3.1996 was sanctioned but the same is not being paid inspite of repeated requests and reminders.

3. Learned counsel for the petitioner submits that when the rent has been sanctioned and there is no dispute regarding the quantum of rent payable to the petitioner, there is no bar in issuing appropriate direction for payment of rent. Learned counsel relied upon a decision of the Patna High Court in the case of Subodh Kumar Singh v. State of Bihar and others, 2002 (1) PLJR).

4. It has not been disputed by the petitioner that a contract of tenancy was

created whereby the respondent was put in possession as a tenant. It has also not been disputed that the petitioner approached the Rent Controller for determination of rent and rent was determined under the provisions of the Bihar Buildings (Lease, Rent and Eviction) Control Act. The said Act not only lays down the provisions for determination of fair rent but also provides that in the event of non-payment of rent, the landlord may evict the tenant by filing a suit and can also seek a direction for deposit of entire arrears of rent. Learned counsel for the petitioner has not disputed that alternative statutory remedy is provided under the said Act. The only contention of the petitioner is that since the amount of rent has been sanctioned, a direction can be issued and the writ jurisdiction is the only efficacious remedy. I am unable to accept the contention of the petitioner.

5. It is well settled that when alternative statutory remedy is available, the writ Court should be very reluctant in entertaining the writ petition, reference in this context may be made to a decision of the Supreme Court in the case of Swetambar Sthanakwasi Jain Samiti and another Vs. The Alleged Committee of Management, Sri R.J.I. College, Agra and others, .

6. The claim pf arrears of rent is a money claim and a landlord is entitled to file a suit for recovery of arrears of rent besides a decree of eviction. But there are some statutory bars. A suit for recovery of arrears of rent for the period which has become barred under the law cannot be entertained and a decree for recovery of arrears of rent which is barred by limitation cannot be passed,

7. Now a question arises whether in a case where a claim of arrears of rent which becomes barred under the law of limitation, the writ Court can issue mandamus directing payment of rent for the period which has become barred by law of limitation. I have no doubt in my mind that the writ Court cannot issue such direction for recovery of time barred rent. In the instant case, the writ application has been filed in April, 2002 seeking a writ of mandamus for realization of rent for the period from 10.1.1996. If a suit for recovery of this arrears of rent is filed, no decree can be passed by the Civil Court for recovery of such arrears of rent for the aforementioned period. The decision relied upon will be of no help to the petitioner.

8. For the aforesaid reasons, no relief can be granted to the petitioner in this writ application which is, accordingly, dismissed.