
(2007) 11 PAT CK 0065
In the Patna High Court

Lalit Mohan Dalmia and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 27-11-2007

Acts Referred:

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

Citation : (2008) 1 PLJR 604

Hon'ble Judges : Samarendra Pratap Singh, J;Barin Ghosh, J

Bench : Division Bench

Judgement

Barin Ghosh and Samarendra Pratap Singh, JJ.—The appellants are tenants of a premises situated at Mohalla Lal Bazar in the district of Bettiah containing an area of approximately 1500 Sq.ft, and comprising of seven rooms, a verandah and latrine on the first floor thereof. The land lords of the said premises filed an application before the Controller under the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 for fixation of fair rent of the let out portion of the said premises. It was disclosed by the land lords that the said premises was let out to the appellants in the year 1958 at a monthly rent of Rs. 55/-, which was later on enhanced to Rs. 1 10/-. The Controller by his order dated 7.11.1990 fixed the fair rent of the said premises at Rs. 220/-. Being aggrieved thereby, the land lords preferred an appeal, which was registered as Appeal No. 390 of 1990. While the said appeal was pending, the land lords applied afresh for fixation of fair rent of the said premises. The application was allowed. The order allowing the said application was challenged by the appellants in C.W.J.C. No. 3905 of 1992. By a consent order the said writ petition was disposed of whereby the order impugned therein was set aside and the land lords were permitted to pursue their appeal. The land lords, however, filed a fresh appeal which was registered as R.M.41 of 1991-92. This appeal was remitted by the appellate order dated 22.2.1993 to the original authority under the Act. The order dated 22.2.1993 was challenged by the appellants in C.W.J.C. No. 3182 of 1993. The said challenge succeeded when this court by order dated 24.1.1994 quashed the said order dated 22.2.1993 and directed the Collector, West Champaran, Bettiah

i.e. the appellate authority, to decide the appeal registered as R.M.41/1992 in accordance with law after calling for a fresh report from an authority. In terms of the said order of this court, the Collector asked the Additional Collector to make a fresh enquiry and to submit a fresh report. Such a report was submitted, which suggested that the fair rent of the premises should be Rs. 1800/- per month. Apart from the said report and the records of the first authority under the Act, which contained an earlier report of the Block Development Officer, there was nothing else on the records of the appellate authority. The records of the first authority under the Act did not contain any material except the said earlier report of the Block Development Officer. The Additional Collector who submitted the subsequent report did not make any effort to ascertain 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 or as on the date of his inspection. The same is the case in so far as the report of the Block Development Officer is concerned. Considering the materials before him, the appellate authority fixed the fair rent, as on the date of filing of the application at Rs. 650/- and at Rs. 1025/- from the date of his order passed on 8.8.1996. Challenging the said order of the appellate authority dated 8.8.1996 the land lords filed C.W.J.C. No. 4907 of 1997 and the appellants filed C.W.J.C. No. 7543 of 1997, after both of them having had lost before the revisional authority. While the land lords contended that the fair rent should not be less than Rs. 1800/- per month as was recommended by the Additional Collector but may be stretched to Rs. 2500/- which figure had also come up in the report of the Additional Collector, the tenants contended that enhancement beyond 25% is not permissible and in any event no procedure has been adopted to determine fair rent on the basis of principles laid down in the Act and the rules framed thereunder. These two writ petitions were heard simultaneously and the learned Single Judge by a common judgment and order dated 23.12.1998 while allowed the writ petition of the land lords and thereby increased the fair rent to Rs. 1800/- dismissed the writ petition filed by the appellants. Being aggrieved and dissatisfied with the said judgment and order, the present Letters Patent Appeals have been filed.

2. The Collector while fixing fair rent increased the rent by 25% for every three years and thereby arrived at the figure of Rs. 650/- on the date of filing of the first petition for fixation of fair rent. Before us the learned Counsel for the appellants did not question the correctness of the said fixation. He, however, contended that there was no just reason for fixation of fair rent at Rs. 1025/- with effect from the date of the order of the appellate authority. He also contended that the writ court erred in fixing the fair rent at Rs. 1800/-. It was submitted that no sooner fair rent was fixed at Rs. 650/- as on the date of the application, the lis came to an end and accordingly there was no scope of fixation or re-fixation of fair rent at Rs. 1025 with effect from 8.8.1995. It was also contended that apart from the wish of the Additional Collector that the fair rent should be Rs. 1800/-, there is nothing on the record of the case which would

support such wishes of the Additional Collector.

3. Learned counsel appearing on behalf of the land lords contended that the matter of fixation of rent is pending since 1990. He submitted that as far back as on 24.1.1994 this court while disposing of C.W.J.C. No. 3182 of 1993 expressed anguish for the delay in fixation of fair rent. It was submitted that while there was recommendation of an authority, as that of the Additional Collector, for fixation of fair rent at Rs. 1800, there was no contrary evidence that fair rent should be fixed at a sum less than Rs. 1800/-. It was submitted that by the judgment and order under appeal, the learned Single Judge taking into account long pendency of the matter and also subsequent events correctly held that fair rent should be Rs. 1800/-. He also submitted that the premises in question is situated in a prominent market place of Bettiah and the same is being used for commercial purposes. In the circumstances it was submitted that this court should not interfere with the judgment and order under appeal.

4. The reports referred to above do not suggest that the said premises is situate in the heart of any market at Bettiah, although such contention had been put forward in the writ petition filed by the land lords. Apart from the said reports there was no other material in the records of the appellate authority. The conclusion would be that the appellate authority had no inkling that the said premises is situated in the heart of any market place at Bettiah. Similarly none of the reports suggests that the premises in question is being used for commercial activity. In the circumstances the appellate authority had no knowledge of the same.

5. Section 8 of the Act directs determination of fair rent in accordance with the Rules framed for that purpose. Rule 2 framed for that purpose directs the Controller to take into account the prevailing rates of rent in the locality for the same or similar accommodation in similar circumstances at any time during twelve months preceding the date of his order. Section 8 of the Act also directs that in determining fair rent of any building, the Controller shall have regard to the prevailing rates of rent in the locality for the same or similar accommodation in similar circumstances at any time during twelve months preceding the first day of December, 1980. The proviso to Section 8 of the Act also directs ascertainment of average monthly rent actually paid for the same or similar accommodation over a period of twelve months preceding the first day of December, 1980.

6. It, therefore, makes it abundantly clear that the prevailing rates of rent in the locality for the same or similar accommodation is required to ascertain. In the report of the Additional Collector he did not make any effort to do so. As a result, his report was of no value. The recommendation contained therein were based on ipse-dixit of the Additional Collector and accordingly had no value at all. The report of the Block Development Officer is also of same effect.

7. In those circumstances, we are of the view that the appellants are correct in

contending that the learned Single Judge while dealing with the writ petition by the impugned order incorrectly held that the fair rent of the premises shall be Rs. 1800/- per month. We accordingly set aside the judgment and order under appeal.

8. The question is whether we should interfere with the order of the appellate authority in fixing fair rent of the premises in question at Rs. 1025/-per month with effect from 8.8.1995. The proviso to Section 8 of the Act authorizes increase up to a limit of 25% of the monthly rent ascertained by taking average of monthly rents over the period of 12 months preceding the first day of December, 1980. The section talks about re-determination also.

9. Clause 2 of Section 2 of the Act defined fair rent as rent of building determined or re-determined under Sections 5, 6 or 7 of the Act. Section 5 authorizes determination of fair rent in occupation of tenant; whereas Section 6 provides for determination of fair rent of building not in occupation of tenant and Section 7 directs re-determination of fair rent in certain cases. In terms of Section 7 re-determination can be affected only when it appears that subsequent to determination of fair rent some addition, improvement or alteration has been made to the building at the land lord's expense. Therefore, re-determination of fair rent is only possible when there has been an improvement or addition to the let out premises. At the same time Section 8 directs that fair rent of a building shall be determined in accordance with the Rules framed for that purpose and as aforesaid in the Rules it has been provided that in determining the fair rent, the Controller shall take into account, amongst others, 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 of the date of his order. Therefore, the fair rent to be determined must relate to rent prevailing at any time during the twelve months preceding the date of the order passed by the Controller. An appeal is a continuation of the original proceeding. The appellate authority while exercising the appellate jurisdiction, exercises the power of original authority. In the event the appellate authority interfere with the order of the first authority and fixes fair rent on certain principle not taken note of by the first authority, the appellate authority exercises the power of the first authority, though at the appellate stage. The appellate authority, therefore, was required to fix fair rent at the prevailing rates of rent at any time during the twelve months preceding the date of his order and he having had done so on the date of his order, the same is not interferable.

10. There is nothing on the record which would suggest that Rs. 1025/-was the prevailing rates of rent in the locality for the same or similar accommodation in similar circumstances at any time during twelve months preceding the date of the order of the appellate authority, but the said sum of Rs. 1025/-, having been arrived on the basis of enhancement at the rate of 25% for three years, and the principle of enhancement at the rate of 25% for every three years having not been seriously challenged, we will not go into that question at this belated stage.

11. We accordingly, do not further interfere with the appeals. There shall be no order as to costs.