
(2002) 05 PAT CK 0076

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2109 of 2002

Mahendra Prasad and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 03-05-2002

Acts Referred:

Bihar and Orissa General Clauses Act, 1917 — Section 4(30)

Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 — Section 4

Citation : (2002) 2 BLJR 1052 : (2002) 2 PLJR 720

Hon'ble Judges : S.K. Katriar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.K. Katriar, J.—This writ petition is directed against the orders marked Annexure-7 series to the writ petition, issued by the Agricultural Produce Market Committee, Darbhanaga (hereinafter referred to as "the Committee"), whereby the rental of the shops occupied by the petitioners and let out by the Committee has been enhanced. Nine petitioners have joined together to raise a common cause, inter alia, challenging enhancement of the rent of the shops allotted to them.

2. Although the formal orders relating to the petitioners are different, they raise a common cause. I will, therefore, state the facts only with respect to petitioner No. 1 (M/s. Mahendra Prasad, through its partner Mahendra Prasad), unless specifically indicated with respect to any other petitioner. The nine petitioners (1. M/s. Mahendra Prasad, through its partner Mahendra Prasad, 2. M/s. Mithila Alu Bhandar, through its partner Kailash Prasad Sah, 3. M/s. Kumar Umesh Prasad, through its proprietor Sakaldeo Singh, 4. M/s. Kapildeo Singh, through its proprietor Kapildeo Singh, 5. M/s. Satya Narain Sah Bhola Prasad, through its proprietor Satya Narain Sahu, 6. M/s., Lakshman Sah and Brothers, through its proprietor, Manoj Kumar, 7. M/s. Vishal Traders through its proprietor Ram Babu Prasad, 8. M/s. Baiju Bhandar through its proprietor Ram Babu Gupta and 9. M/s.

Shiv Grain Stores through its proprietor Ram Babu Prasad) are licensees from the Committee under the provisions of the Bihar Agricultural Produce Market Act, 1960 (hereinafter referred to as "the Act, 1960"), read with the Bihar Agricultural Procedure Market Rules 1975 (hereinafter referred to as "the Rules"). The petitioners have taken shops in the principal market yard, Agricultural Produce Market Committee, Darbhanga, on monthly rental where they are carrying on their trade and business. Petitioner No. 1 was allotted shop No. C-2 which was occupied in 1990 at a provisional rental of Rs. 300/- per month. It appears from the pleadings of the parties that the shops and godowns were allotted to petitioners for the specific purpose of carrying on trade in agricultural produce on provisional rental to be rationalized on scientific basis. It appears that the issue relating to fixation of final rent had to undergo various phases since 1990 and seems to have ultimately crystallized and is sought to be implemented by the impugned order bearing letter No. 172, dated 25.1.2002 (Annexure-7), whereby petitioner No. 1 has been called upon to deposit the differential of the rent since the date of his occupation till date. Petitioner No. 1 by the impugned order has been called upon to pay the arrears amounting to Rs. 1,23,429.00.

3. While assailing the validity of the impugned action, Mr. K.D. Chatterjee appearing for the petitioners has advanced only one submission. He submits that enhancement of rent is hit by the provisions of Section 4 of the Bihar Buildings (Lease, Rent & Eviction) Control Act, 1982 (hereinafter referred to as "the Rent Control Act"). In his submission, the Committee is governed by the Rent Control Act, and therefore, it can enhance the rent only by resorting to the provisions of Section 4 of the Rent Control Act. He relies on the judgment of a learned Single Judge of this Court in *Amrit Varsha Hindi Dainik v. Bihar State Agriculture Marketing Board* 1999 (1) PUR 1. He further submits that the proposition of law for which he places reliance on this judgment has been upheld in appeal by a Division Bench of this Court in *Amrit Varsha Hindi Dainik Vs. Bihar State Agriculture Marketing Board and Another*, . If it is held that the Committee is governed by the Rent Control Act, he submits, the Committee shall have to approach the authorities under the Act for enhancement of rent.

4. Mr. Ram Janam Ojha submits in support of the impugned order that the Committee is not governed by the provisions of the Rent Control Act and is, therefore, free to enhance the rent. He next submits that there has been no retrospective enhancement of rent. The correct position is that the rent had been provisionally fixed at the inception and some time was taken in finally fixing the rent. He has relied on a number of judgments of this Court.

5. Before I delve into the semantics of the relevant provisions, I must set out the same for easy reference. Mr. Chatterjee has relied on the provisions of Section 4 of the Rent Control Act in an effort to establish his submission that the Committee is covered by the provisions of the Act. Section 4 reads as follows:

4. Enhancement of rent of buildings.-Notwithstanding anything contained in any agreement or law to the contrary, it shall not be lawful for any landlord to

increase or claim any increase in the rent which is payable for the time being, in respect of any building except in accordance with the provisions of this Act.

He submits that there being relationship of landlord and tenant between the parties, the Committee should resort to the provisions of Section 4 of the Rent Control Act and approach the authorities under the Act for enhancement of rent. Mr. Chatterjee has fairly submitted that if his contention fails, then the Committee can enhance the rent and the question of enhancement of rent retrospectively or prospectively is of no consequence. He has also relied on Section 4(30) of the Bihar & Orissa General Clauses Act, 1917, which reads as follows:

4.(30). "Local authority" shall mean a municipal committee, district board, body of port Commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund.

In his submission, the Committee is not "local authority" within the meaning of Section 4(30) of the General Clauses Act and is, therefore, covered by the Act.

6. Learned Counsel for the respondents, on the other hand, submits that the Committee is a "local authority" within the meaning of Section 32 of the Rent Control Act read with Section 50 of the 1960 Act. The former reads as follows:

32. Act not to apply to buildings owned by Government and Trusts.-Nothing contained in this Act shall apply to a tenant whose landlord is the local authority or the State Government or the Central Government or the Bihar State Shwetamber Jain Trust Board or Bihar State Digamber Jain Trust Board or the Wakf which may be under the Bihar State Wakf Board.

Section 50 of the 1960 Act reads as follows:

50. Audit of the accounts of Market Committee.-The accounts of a Market Committee shall be subject to audit under the Bihar and Orissa Local Fund Audit Act, 1925 (B & O Act II of 1925), and for the purposes of the said Act, the Committee shall be deemed to be a local authority whose accounts have been declared by the State Government to be subject to Audit u/s 3 of the said Act and the Market Committee Fund shall be deemed to be a local fund.

In his submission, the same has to be read with the provisions of Section 3 of the aforesaid Bihar and Orissa Local Fund Act 1925 (B & O Act II of 1925). Section 2(c) defines "local fund" and reads as follows:

2(c) "local fund" means any fund not being a cantonment fund to the control or management of which a local authority is legally entitled, and any cases, rate, duty, or tax which such authority is legally entitled to impose, and any property vested in such authority.

Section 3 of the said local Act is regarding liability of the local authority to submit its account to audit.

7. Before I set out to interpret the aforesaid provisions of the Act in an effort to determine whether or not the Committee is "local authority" within the meaning of Section 32 of the Rent Control Act, I must confess that the issue is not free from difficulties. I, however, take the view that I have taken for the reasons indicated hereinbelow. The issue is almost a case of first impression. It is obvious from a plain reading of Section 32 of the Rent Control Act that the same does not apply to a case where the landlord is a "local authority". The difficulty has been created by the position that neither of the provisions referred to by the learned Counsel for the parties in clear and unambiguous terms lay down that the Committee is a "local authority" within the meaning of the Act. The question is of ascertaining the intendment of the Legislature to be inferred from the relevant provisions. The expression "other authority" and "local fund" occurring in Section 4(30) of the 1917 Act may provide the clue provided the expression "local fund" is within the sweep of the expression "local fund" occurring in Section 2(c) of the Local Act of 1925. It appears to me from a conjoint reading of the aforesaid provisions that the Legislature intended that the Committee should be deemed to be a local authority within the meaning of the various enactments cited in the present context and the most important circumstances appears from the provisions of Section 50 of the 1960 Act. The expression "local authority" and "local fund" occurring therein have to be given the same meaning as to be found in the Local Act of 1925. On a conjoint reading of the aforesaid provisions, I would prefer to reach the conclusion that the Legislature intended the Committee to be a "local authority" within the meaning of Section 32 of the Rent Control Act.

8. In this context, I must refer to the judgment of learned Single Judge of this Court relied on by the learned Counsel for the respondents reported in *Kalika Prasad Roy Vs. The State of Bihar and Others*, , which appears to me to support the conclusion that the Committee is a local authority within the meaning of the Rent Control Act. That was really a case of suspension as well as initiation of departmental proceeding against the petitioner for breach of Rules 6(4) and 16(3) of the Bihar Government Service Conduct Rules 1976. The petitioner was in the services of the Natwar Agricultural Produce Market Committee. The learned Single Judge formulated in paragraph 5 of the judgment that".... The only question for determination is as to whether the petitioner's action in filing the nomination paper for being elected from the Agriculture constituency of the Market Committee amounts to breach of the provision contained in Rule-6(4) and 16(3) of the Rules...." The question for determination in that context, therefore, was whether or not the Market Committee is a "local authority" in which case it was beyond the operation of the Conduct Rules. The learned Single Judge held that the Market Committee is a local authority for the purpose of Rule 6(4) of the Conduct Rules. The judgment did not involve interpretation of Section 4 or 32 of the Rent Control Act, but does support the contention advanced on behalf of the respondents.

9. I now deal with the judgments cited by the learned Counsel for the parties. Learned Counsel for the petitioners has relied on the judgment of a learned

Single Judge of this Court in *Amrit Varsha Hindi Dainik* (supra). The same related to the question of tenancy between the petitioner and the Bihar State Agricultural Marketing Board. The petitioner was a tenant of the Marketing Board and had fallen in arrears. The Board had, therefore, taken steps for the petitioner's eviction in terms of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, which was challenged in that writ petition. The learned Single Judge did hold in paragraph 8 of his judgment that "... except the buildings owned by the local authority or the State Government or the Central Government or the Bihar State Shwetamber Jain Trust Board or the Bihar State Digambar Jain Trust Board and the Wakfs under the control of the Bihar Wakf Board, as provided u/s 32 of the Act, the Act (the Rent Control Act) is applicable to all buildings within meaning of Section 2(b) of the Act in the whole of the State of Bihar. It is not the case of the respondent-Board that it comes under any of the classes mentioned in Section 32. There, thus, cannot be any doubt that the provisions of the BBC Act are applicable to the building in question...." It is, however, manifest from a plain reading of the entire judgment that the issue whether or not the Marketing Board is covered by the terms of Section 32 of the Rent Control Act was not contested by the parties. The matter had practically proceeded on concession. The same was the subject-matter of appeal before a Division Bench of this Court, the judgment of which is reported in 2000 (2) PUR 729 *Amrit Varsha Hindi Dainik v. Bihar State Agri Market, Board*. The appeal was substantially allowed by the Division Bench. The Board had submitted in appeal that the Marketing Board is a "local authority" within the meaning of Section 32 of the Rent Control Act and, therefore, the same is inapplicable to the tenancy created by the Board. The question was dealt with by the Division Bench in paragraph 16 of the judgment, and it is manifest that the Division Bench did not approve of the observations made by the learned Single Judge to the effect that the provisions of Rent Control Act are applicable in the present situation, apart from the position that the issue and before the learned Single Judge virtually proceeded on a concession on the part of the respondents and, therefore, there was neither a contest nor a discussion of the issue. On the contrary, as stated above, the observation made by the Division Bench in paragraph 16 of the Judgment is to the effect that the issue is still at large. The aforesaid judgments are, therefore, of no avail at all to the petitioner.

10. I must now deal with the judgments relied on by the learned Counsel for the respondents. The first judgment in point of time on this issue is the order dated 15.4.1987, passed by a learned Single Judge of this Court in CWJC No. 730 of 1986 (R) *Khandelwal Trading Co. v. State of Bihar*, which was also a case relating to tenancy between the petitioner and the Principal Market Yard, Dhanbad, and the same question as in the present case had arisen. However, the issue had proceeded on the basis of concession on the part of the learned Counsel for the respondent, as would be manifest from the following portion of the order.

... It was contended on behalf of the petitioner that in view of Section 32 of the B.B.C. Act, the application filed by respondent No. 3 before respondent No. 2 was

not maintainable as the respondent No. 3 is the local authority. Mr. V.P. Singh, learned Counsel appearing on behalf of Respondent No. 3 did not contest the fact that respondent No. 3 was a local authority. He, however, contended that the petitioner is in occupation of shop-cum-godown in the Principal Market Yard without paying any rent.

in view of the fact that respondent No. 3 is a local authority, it must be hold that B.B.C. Act had no application with regard to the buildings belonging to respondent No. 3. The application filed by respondent No. 3 before respondent No. 2 was, therefore, not maintainable....

It is thus manifest that the conclusion in the case of Khandelwal Trading Co. (supra) that the Market Committee is a local authority within the meaning of Section 32 of the Rent Control Act proceeded on the basis of concession to that effect by the learned Counsel for the Market Committee. The same was followed by a Division Bench of this Court in its judgment dated 23.1.1996, in CWJC No. 7015 of 1991 Maliram Puranchad v. Bihar Agricultural Produce Market Committee Gaya reported in Pat. L.R. 1996 Patna 199, which held as follows in paragraph 6 of the judgment and set out hereinbelow for the facility of quick reference:

6. It would also be relevant to notice that identical question was considered by a Bench of this Court at Ranchi in the case of Khandelwal Trading Co. v. The State of Bihar and Ors. CWJC No. 730 of 1986 (R). In that case also, there was an agreement for payment of rental at the rate of Rs. 250/- per month. The Court, while disposing of the writ petition, held that the Market Committee being local authority under the Act, is fully entitled to realise rent or make enhancement in appropriate cases.

The two judgments in Khandelwal's case and M/s. Maliram Puranchand's case (supra) similarly led to the judgment dated 8.4.1999, passed by a learned Single Judge of this Court in CWJC No. 8150 of 1993 Ganesh Trading Co. v. Bihar State Agriculture Marketing Board and Ors. (Annexure-E to the counter-affidavit). The learned Single Judge held in paragraph 6 of the judgment that".... Considering the facts and circumstances of the case, therefore, in my opinion, this case is fully covered by the ratio laid down by this Court in the case of Maliram Puranchand and Ors.

11. It is thus manifest that the aforesaid judgments relied on by the learned Counsel for the respondents is of no assistance to the respondents in determining the question whether or not the Market Committee is a "local authority" within the meaning of Section 32 of the Rent Control Act, obviously for the reason that the order in Khandelwal's case (supra) was based on concession which led to the subsequent judgment. In neither of the case the issue was contested and, therefore, there was no occasion to consider the relevant provisions of the various Acts. This aspect of the matter has been noticed by the Division Bench in paragraph 15 of its judgment in Amrit Varsha Hindi Dainik (supra) wherein similar observations have been made.

12. As to the judgment dated 26.6.1996, passed by a learned Single Judge of this Court on CWJC Nos. 9939 and 9940 of 1995 *Durga Anna Bhandar v. Agriculture Produce Market Committee, Mohania* reported in Pat. L.R. 1996 Patna 510, it was held relying on the judgment in *Maliram Puranchad's* case (*supra*), that the Market Committee is justified in demanding rent or arrears of rent of the shops & godowns from the persons who are in possession of the shops & godowns. The question whether or not the Market Committee is a "local authority" within the meaning of Section 32 of the Rent Control Act had not arisen for consideration in that case. However, all the aforesaid Judgments relied on by the learned Counsel for the respondents have upheld the Committee's right to enhance the rental without resorting to the provisions of the Rent Control Act.

13. On a consideration of the relevant provisions of the various statutes discussed hereinabove and the various judgments cited before me, I reach the conclusion that the Market Committee is a "local authority" within the meaning of Section 32 of the Rent Control Act and is, therefore, beyond the purview of the Act. In that view of the matter, the contention advanced on behalf of the petitioners based on Section 4 of the Rent Control Act must fail. In other word, the Committee is not required to resort to the provisions of the Act for enhancement of the rent.

14. There is yet another aspect of the matter which must be noticed. Even if it is conceded for the sake of argument that the petitioners succeed on the aforesaid contention and it is held that the Committee is not "local authority", yet the provisions of Section 4 of the Rent Control Act are inapplicable to the facts and circumstances of the present case for the reason that the same for its applicability envisages a situation where the rent had at the commencement of the tenancy or at the time of renewal been finally fixed in which case the landlord will have, for the purpose of enhancement, resort to the provisions of the Act. It instated in paragraph 20 of the counter-affidavit that "...for such occupation was fixed on ad-hoc basis for use and occupation by the allottees which was to be later rationalized on scientific basis and the writ petitioners cannot claim that the same would prevail for all time irrespective of changes in all aspects everywhere including escalation of prices and cost of living index and further developments." It is thus manifest from the uncontroverted statements made in the counter-affidavit that the rent was provisionally fixed at the commencement of the tenancy and the time was, thereafter, taken by the Board in finally fixing the rent resulting in the impugned order, a factual position not controverted by the petitioners.

15. In the result, this writ petition is dismissed. In the circumstances of the case, however, there shall be no order as to costs.