

(2003) 08 JH CK 0072
In the Jharkhand High Court
Case No : L.P.A. No. 580 of 2002

Rajendra Behl

APPELLANT

Vs

Commissioner, South Chotanagpur Division and Others

RESPONDENT

Date of Decision : 04-08-2003

Acts Referred:

Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 — Section 16, 5, 8, 8(1)
Constitution of India, 1950 — Article 226

Citation : (2003) 2 BLJR 1577 : (2003) 3 JCR 536

Hon'ble Judges : P.K. Balasubramanyan, C.J; R.K. Merathia, J; Gurusharan Sharma, J

Bench : Full Bench

Advocate : Mihir Kumar Jha, N.C. Dutta, Ajit Kumar and Mukesh Kumar Singh, for the Appellant; P. Modi, GP-I and S. Srivastava, for the Respondent

Judgement

1. This appeal is by a tenant as defined in the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982, hereinafter referred to as the Act.

2. The building was let out to the tenant on 15.8.1982 on a monthly rent of Rs. 2000/-. According to the tenant, the total area, of the premises let out to him was 7940 sq. ft. and the building had 14 rooms. In August 1983, the landlord filed a suit for eviction under the Act on various grounds including the ground of arrears of rent. Though the suit was decreed as a whole by the trial Court, in appeal, the High Court modified the decree and confined it to a decree for recovery of arrears of rent, thus, rejecting the claim for eviction.

3. On 13.12.1991, the landlord filed an application u/s 5 read with Section 8 of the Act for fixation of fair rent in respect of the building. The tenant resisted the application. On 30.6.1992, the Rent Controller passed an order fixing the fair rent at Rs. 17,950/- per month with effect from 30.6.1992. An appeal was filed by the tenant against that order, as BBC Appeal No. 23-R 15/92-93. The landlord also filed an appeal as BBC Appeal No. 36-R/92-93. On 20.11.1992, in the appeal filed by the tenant, finding that the tenant had not paid any rent, the

Appellate Authority passed an order directing the tenant to deposit the rent fixed as the fair rent by the Rent Controller in terms of Section 16 of the Act as it stood prior to its amendment with effect from 14.2.1994. The matter was posted for deposit of the rent to 8.1.1993 and was again adjourned to 22.1.1993. Noticing that the tenant had not deposited or paid the rent, the matter was again adjourned to 5.3.1993. On that date, finding that the tenant had not deposited the rent as fixed by the Rent Controller, and as ordered by the Appellate Authority, the defence of the tenant was struck off and as a consequence, the appeal filed by the tenant was dismissed. Subsequently, by order dated 28.5.1993, the appeal filed by the landlord was allowed after hearing both sides and the fair rent was enhanced from Rs. 17,950/- to Rs. 25,390/- per month.

4. The tenant had filed a revision No. 47 of 1993 challenging the order of the Appellate Authority dated 20.11.1992 directing him to deposit the fair rent in terms of Section 16(1) of the Act. But no revision was filed by the tenant against the final order dated 5.3.1993, dismissing the appeal filed by him on the striking down of his defence in terms of Section 16(2) of the Act as it then stood. Thus, the order dated 5.3.1993 dismissing the appeal filed by the tenant challenging the final order of the Rent Controller fixing the fair rent, become final, whatever may be the reason for the dismissal. The tenant also filed another revision No. 34 of 1994 challenging the enhancement of fair rent in the appeal filed by the landlord, from Rs. 17,950/- to Rs. 25,390/- per months. The tenant, in the revision filed against the interim order dated 20.11.1992 in his appeal, sought a stay of operation of the order of the Rent Controller impugned in that revision, namely, the order directing him to deposit the fair rent. Though on 19.7.1993, the Revisional Authority stayed the operation of the order dated 20.11.1992, in a writ petition filed by the landlord, the said order of the Revisional Authority was quashed and the Revisional Authority was directed to dispose of the revisions on merit. It is thereafter that the Revisional Authority look up both the revisions filed by the tenant, one against the interlocutory order of the Appellate Authority in the appeal filed by him and the other, against the final order passed by the Appellate Authority in the appeal filed by the landlord, enhancing the fair rent. The Revisional Authority, on a consideration of the relevant aspects, dismissed both the revisions. Feeling aggrieved thereby, the tenant filed CWJC No. 731 of 1998 invoking Article 226 and 227 of the Constitution of India.

5. The learned Single Judge found that there was no error apparent on the face of the record justifying his interference and that the order fixing fair rent was passed well within the jurisdiction of the Authorities under the Act. The learned Single Judge also held that in view of the prevailing rates of rent and the commercial use to which the building was being put to by the tenant, the fair rent fixed cannot be considered to be unreasonable in any manner. The learned Single Judge also took note of what he thought was the recalcitrant attitude of the tenant in not paying a reasonable rent to the landlord. The writ petition was dismissed. It is this dismissal of the writ petition that was challenged in this appeal by the tenant.

6. When the appeal came up before a Division Bench on 16.1.2003, the Division Bench thought that the argument based on the amendment of Section 16 of the Act raised by learned counsel for the tenant required a detailed consideration and the Full Bench decision of the Patna High Court in *Dr. Sachchidanand Sinha v. The Collector* 1989 PLJR 1141 had also to be considered in the context of the relevant provisions. It was thus that the appeal was referred to the Full Bench.

7. Learned counsel for the tenant raised various contentions. He argued that the fair rent fixed by the Controller was not Just and not in conformity with Section 8 of the Act, with particular reference to the proviso to Section 8(1)(c) of the Act. Learned counsel for the respondent-landlord pointed out that it was not open to the tenant to challenge the fair rent fixed by the Rent Controller in view of the fact that the appeal filed by the tenant against the final order of the Rent Controller was dismissed by the Appellate Authority on 5.3.1993 and that dismissal became final, since the tenant had not questioned that final order in any revision as provided by Section 26 of the Act. He pointed out that the revision filed by the tenant in so far as it related to the appeal filed by him, challenged only the interlocutory order dated 20.11.1992 passed in that appeal. He submitted that this aspect had been specifically adverted to by the Division Bench of this Court on an earlier occasion, in LPA No. 34 of 1995 wherein this Court noticed the finality attained by the final order in BBC Appeal No, 23-R 15/92-93 passed by the Appellate Authority. It could not be argued on behalf of the tenant that the tenant had, in fact, filed an appeal against the final order dated 5.3.1993 in that appeal. It had to be conceded that no appeal was filed against that order. But what was sought to be contended was that when the appeal against the interlocutory order in BBC Appeal No. 23-R 15/92-93 was taken up for hearing. Section 16 of the Act stood amended and while dealing with that revision, the Revisional Authority was bound to take note of the amendment brought about to Section 16 of the Act and was entitled to deal with the question of correctness of the final order passed in the appeal by the Appellate Authority. We are not in a position to accept this submission of learned counsel for the tenant. According to us, on the date Revision No. 47 of 1993 was taken up for hearing, the main appeal filed by the tenant, BBC Appeal No. 23-R 15/92-93, had been finally dismissed and the revision had become infructuous. Moreover, any interference with that interim order could not automatically lead to disappearance of the final dismissal by the Appellate Authority of the appeal filed by the tenant. That final order had to be challenged separately. It may be noted that even inspite of the Division Bench noticing in its judgment in LPA No. 34 of 1995 as early as on 4.12.1995, that the order had attained finality, no attempt had been made by the tenant to challenge the final order dated 5.3.1993, even belatedly and in that situation, attaining of the finality of that order could not be ignored by the tenant or by the Court. Thus, according to us, the challenge, of the tenant to the fixation of the fair rent at Rs. 17,950/- per month is barred in view of the finality attained by that order consequent on the dismissal of the appeal of the tenant by order dated 5.3.1993.

8. In view of our conclusion that the tenant had lost his right to challenge the final orders of the Appellate Authority by allowing it to become final, the ratio of the decision in *Dr. Sachchidanand Sinha v. Collector* 1989 PLJR 1141 has not much relevance. Even otherwise, the following were the answers of the Full Bench in that case :--

(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 Sub-section (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."

The Appellate Authority in this case had to dispose of the appeal as if the tenant had not put up any defence against the claim of the rate of rent by the landlord before the Controller. Hence the defence had been struck off since the tenant failed to comply with the order to deposit the fair rent fixed by the Rent Controller. There was therefore nothing to argue in the appeal filed by the tenant in this proceeding for fixation of fair rent and the Appellate Authority rightly dismissed it. No grievance can be made of the fact that the appeal was dismissed the same day by a separate order as the day on which an order u/s 1(b)(2) of the Act striking off the defence was passed.

9. But, the tenant is entitled to contend in view of the fact that he challenged in revision the decision of the Appellate Authority in BBC Appeal No. 36-R/92-93, that the enhancement of fair rent from Rs. 17,950/- to Rs. 25,390/- by the Appellate Authority in the appeal filed by the landlord was not justified. Learned counsel for the tenant contended that the proviso to Section 8(1)(c) of the Act imposed a restriction on the Rent Controller in fixing the quantum of fair rent in

respect of a building that had been constructed prior to 01.12.1980 and that restriction has not been properly noticed by the Appellate Authority while enhancing the fair rent from Rs. 17,950/- to Rs. 25,390/- per month.

10. Section 5 of the Act enables the landlord or the tenant of a building to make an application to the Rent Controller for fixation of fair rent. The Rent Controller is enjoined to hold a summary enquiry, if he has reason to believe that the rent is low or excessive, and to record a finding on what should be the fair rent. In other words, he has to determine the fair rent for the building, Section 8 of the Act indicates the matters to be considered by the Rent Controller while determining the fair rent has to be determined in accordance with the Rules framed for that purpose. The Rent Controller has to have due regard to 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. He is also entitled to take note of the increased cost of repairs. In the case of a building, which has been constructed after 1.12.1980, he is also entitled to take into account any general increase in the cost of the site and construction cost of the building. The proviso to Section 8(1)(c) of the Act enjoins the Rent Controller to fix that rent of a building at a figure which shall not be less than the average monthly rent actually paid for the same or similar accommodation by any tenant over the period of twelve months preceding the first-day of December, 1980 increased by not more than 25% of the average monthly rent so received by the landlord during the aforesaid period, in addition to the enhancement if any, on account of the increased costs of repairs or any general increase in the cost of site and building construction where such enhancement is admissible under the main provision. The explanation explains the mode of - calculating the average monthly rent for which a building was let in case the rent was being charged or paid not on a monthly basis. The relevant rule is, Rule 3 of the Bihar Buildings (Lease, Rent and Eviction Control) Rules 1983. It provides that in determining the fair rent, the Rent Controller shall take into account the prevailing rate of rent in the locality for the building or similar accommodation in similar circumstances at any time during twelve months preceding the date of his order, the increased cost of repairs required to be made in the building; the amenities, general or special, provided in the building; the compound of the open land attached to the building; the type of construction and the location of the building; whether the tenancy is for residential or non-residential purpose; the municipal or corporation tax of the building and; any lawful agreement entered into between a landlord and a tenant. But the rule also provides that, in case of any conflict between the Section and the Rule, the provision in the Act shall invariably prevail in determining the fair rent. Section 8 of the Act has been the subject matter of a few decisions. We shall now notice them.

11. In *Secretary, Balika Shiksha Bhawan v. State of Bihar* 1990 (1) PLJR 61 Mr. Justice B.P. Singh (as he then was) sitting at Ranchi, held that Section 8(1)(c) of the Act and its proviso, only prescribes a minimum rent that the Rent Controller

can determined as fair rent and it does not provide for a maximum limit to the quantum of fair rent he may fix. In *Ram Adhin Singh v. State of Bihar* 1993 (1) PLJR 637 another learned Single Judge held that Section 8 fixed a maximum of 25% above the rent received and the earlier decision must be held to be per in curium.

In *Saraswati Devi v. Commissioner of Bhagalpur Division* 1996 (1) PLJR 924 a Division Bench referred to both the above decisions and held that the object of the legislation was not properly considered in *Ram Adhin Singh v. State of Bihar* 1993 (1) PLJR 637 the provision was a piece of beneficial legislation enacted keeping in view the welfare of the landlord and that Section 8 of the Act and Rule 3 of the Rules need not be interpreted in a restrictive manner. In *Jai Narayan Prasad Choudhary v. State of Bihar* 1996 (2) PLJR 896 a learned Single Judge held that the Section contemplated fixation of a rent which was fair, both to the landlord and the tenant and that even if the proviso to Section 8(1)(c) of the Act is assumed to be inconsistent with, the main provision, it could not be declared ultra vires and that the rent had to be fixed based on the rent for the twelve months preceding the first day of December, 1980. We may notice here that there is considerable confusion caused by the statement in the earlier part of the judgment rendered by the learned Single Judge that the question is being decided as referred to him by a Division Bench in view of the divergence of views between two learned Single Judges of the Court. It is not necessary to pursue that aspect. In *Shri Bhagwati Hosier Mills (P) Limited v. State of Bihar* 1997 (2) PLJR 470 the Division Bench held that what the Section prescribes is a minimum and not the maximum and thus adopted the view in *Balika Shiksha Bhawan* 1990 (1) PLJR 61. It is brought to our notice that a Petition for Special Leave to appeal filed in the Supreme Court challenging that decision, was "dismissed. It is in the context of these pronouncements that the scope of Section 8 of the Act has to be considered.

12. We shall now read Section 8(1)(c) of the Act with its proviso and explanation (I) which are relevant for our purpose.

"Section 8(1)(c). In determining the fair rent of any other building u/s 5 or 6, the Controller shall have due regard to 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 and to the increased cost of repairs, and in the case a building which has been constructed after that date, also to any general increase in the cost of site and building construction :

Provided that where the Controller is satisfied, on an application made to him by the landlord u/s 5, that the rent of a building referred to in this clause is law, the Controller shall, in determining the fair rent of such building to be payable by a tenant, fix the rent of the building at a figure which shall not be less than the average monthly rent actually paid for the same or similar accommodation by any tenant over the period of twelve months preceding the first day of December,

1980, increased by not more than 25% percent of the average monthly rent so received by the landlord during the aforesaid period in addition to enhancement, if any, on account of the increased cost of repairs or the general increase in the cost of site and building construction, where such enhancement is admissible under the foregoing provision of this clause.

Explanation.--(1) For the purpose of this clause, where rent was charged by the landlord or actually paid by the tenant for the same building over the aforesaid period on any other than a monthly basis, the average monthly rent for such building shall be calculated at thirty times the average rent per day of the period in respect of which the rent was charged or actually paid.

(2) Where the fair rent of a building has been determined or re-determined any sum in excess or short of such fair rent paid, in respect of occupation for any period after such date shall in case of excess, be refunded to the person by whom it was paid or at the option of such person be otherwise adjusted and, in case of shortage be realised by the landlord as arrears of rent from the tenant :

Provided that if a building is let out subsequent to the determination or re-determination of a fair rent, on a rent which is less than the fair rent, so determined or re-determined, the landlord shall not be entitled at any time to realise the difference between that fair rent and the rent at which the tenant was admitted to occupation."

13. On a reading of the provision, it is clear that the Section makes a distinction between buildings that existed as on 1.12.1980 and those which came into existence after 1.12.1980. The main provision directs that the Rent Controller shall have due regard to 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 1.12.1980. That is made the basis. Then, the Rent Controller is to take note of the increased costs of repairs and to determine the fair rent as regards the building that existed as on 1.12.1980. In the case of a building which has been constructed after 1.12.1980, in addition to the above two elements, the Rent Controller is also to take note of any general increase in the cost of the site and building construction. Thus far there does not appear to be any ambiguity. But the proviso proceeds to say that in a case where the Rent Controller is satisfied on an application filed by the landlord that the rent of a building, referred to in Section 8(1)(c) is low, the Rent Controller shall in determining the fair rent, fix the rent ,of the building at a figure which shall not be less than the average monthly rent actually paid for the same or similar accommodation by any tenant over the period of twelve months preceding 1.12.1980, increased by not more than 25 percent of the average monthly rent so received by the landlord, during the aforesaid period, in addition to enhancement, if any, on account of the increased cost of repairs or the general increase in the cost of site and building construction, where such enhancement is admissible u/s 8(1)(e) of the Act. In other words, the proviso seems to say that in fixing the fair rent on an application by the landlord, the Rent Controller has to ensure that the rent is

fixed at a figure which is not less than the average monthly rent actually paid for the building or for similar accommodation by the tenant increased by not more than 25 per cent thereof, in addition to enhancement on account of increased cost of repairs in so far as it relates to a building that existed as on 1.12.1980 and also to take into account the general increase in the cost of site and building construction in the case of building that has come into existence after 1.12.1980. The proviso seems to suggest that what is relevant is the rent actually paid by tenants to landlords during the twelve months preceding 1.12.1980. It may be noted that the main provision does not refer to the rent actually paid, but it refers only to the rent prevailing in the locality during the period mentioned in that Section. But the proviso has not been understood by the decisions of this Court as pegging down the fair rent to the average contract rent paid plus 25% thereof, and any addition permissible on account of repairs. On the other hand, such an argument was overruled in *Balika Shiksha Bhawan* 1990 (1) PLJR 61.

14. Section 2(e) of the Act defines fair rent as rent determined as payable under Sections 5, 6 or 7 of the Act. Therefore, in the context of the Rent Control Act, fair rent has to be understood as rent, that is fair both to the landlord and to the tenant. For, now it is well settled that the Act is neither a pro-tenant piece of legislation, nor a pro-landlord piece of legislation, but it is intended to confer benefits on both, or create obligations on both. In that context, the proviso has to be read along with the main part of the sub-section and must be understood as prescribing the average rent for twelve months preceding 1.12.1980 in respect of similar buildings in the locality, as the basis for fixation of fair rent. The contract rent that was being paid by the tenant or agreed to be paid by him does not appear to have any relevance in determining the fair rent on the basis of the average rent that was being fetched in the locality. In *Secretary, Balika Shiksha Bhawan* 1990 (1) PLJR 61 the argument that the contract rent paid should form the basis for fixation of fair rent was specifically overruled for coming to the conclusion that the rent has to be fixed on the basis of the average rent realizable for similar buildings in the locality. Though Rule 3 of the Rules may not prevail over the Section, it also indicates the components that go into the assessment of fair rent by the Rent Controller. On a harmonious construction of Section 8(1)(c) of the Act and the proviso thereto, we are of the view that as regards a building that existed prior to 1.12.1980, fair rent has to be fixed based on the prevailing rates of rent in the locality for the same building or for similar buildings for twelve months preceding 1.12.1980 and on taking note of the increased cost of repairs. Though Section 8(1)(c) does not specifically say so, the proviso also permits 25% increase in the rent found to have been prevailing in the locality for twelve months preceding 1.12.1980. Of course, as regards buildings that came into existence after 1.12.1980, the Rent Controller is also entitled to take note of the general increase in the cost of site and the building construction.

15. We may at this stage indicate that a Section placing a restriction on the right to receive rent as fair rent, has to be understood in the context of the decision of

the Supreme Court in *Malpe Vishwanath Acharya and Others Vs. State of Maharashtra and Another*, wherein, it was held that the provision pegging the standard rent down to the rent paid on a particular date or the first rent paid for the premises let out after that date, had to be held to be unreasonable and unconstitutional. To the same effect is the decision of the Kerala High Court in *Issac Ninan v. the State of Kerala* ILR 1996 Ker 1 the petition for Special Leave to Appeal against which was dismissed by the Supreme Court. It may riot therefore be permissible to peg down thSe fair rent to the contract rent actually received by the landlord for the building plus an increase of up to 25% and taking into account the subsequent repairs. In fairness to the counsel for the tenant, we must notice that he also did not argue that the fair rent in an application by the landlord could only be the contract rent, plus upto 25% plus something more in lieu of repairs. The argument proceeded on the basis that the average rent that would have been fetched for similar buildings in the locality for the relevant period, must be taken note of. His objection was to the Rent Controller taking note of the general increase in cost of site and the building construction in the ease of a building that came into existence prior to 1.12.1980.

16. In this case, the Rent Controller took note of the average rent for similar buildings in the locality and on the basis of the calculation on the material available, fixed the fair rent at Rs. 17,950/- per month. Though the tenant filed an appeal challenging the fixation, he allowed the appeal to be dismissed and further allowed that dismissal to become final. Therefore, it is not possible for the tenant to contend that the fair rent fixed by the Rent Controller was excessive or that it called for interference on the basis of interpretation of Section 8(1)(c) of the Act. In the appeal filed by the landlord claiming further enhancement, the Appellate. Authority, on a re-assessment of the relevant material, came to the conclusion that the rent ought to be fixed at Rs. 25,390/-. The Appellate Authority also adopted the same yardstick as applied by the Rent Controller, but enhanced the rent after specific reference to the area in square feet available on each of the floors of the building, the commercial purpose for which the building was being put and the prevalent rent in the locality. The Revisional Authority, on a re-appraisal of the felpvant materials, came to the conclusion that there was no reason to interfere with the fixation of the fair rent by the Appellate Authority on the basis of the available materials. The learned Single Judge also took the view that the fair rent i"ixed was reasonable especially considering the great escalation in rates of rent in the locality.

17. We have already noticed that the argument of learned counsel for the tenant that, in the revision filed by him against the interlocutory order of the Appellate Authority, he was entitled to challenge the final decision of the Appellate Authority dismissing the tenant's appeal could not be countenanced. The argument that while the revision was pending, Section 16 of the Act had been amended and the Revisional Authority was bound to apply the amended Section 16, cannot also be accepted for more reasons than one. First of all, there was no revision challenging that final order of the Appellate Authority in the appeal filed

by the tenant dismissing that appeal. That dismissal had become final. The revision against the interlocutory order could not and did not actually survive. Secondly, we find that no such contention was raised by the tenant before the Revisional Authority. There was no attempt to canvass the position that in view of the amendment to Section 16 of the Act, the Revisional Authority was bound to interfere with the final order of the Appellate Authority. When an order at an interlocutory stage is challenged in revision and pending revision, the main appeal itself is dismissed, normally, the revisional Court can only decline jurisdiction on the ground that the Revision has become infructuous. The theory that the final order being a dependent order would fall to the ground on the original order being interfered with, cannot be applied universally and that would depend upon the facts and the circumstances of a particular case. But in a case where, as in the present, the dismissal of the appeal finally has been left untouched, we are of the view that the theory cannot be invoked. Here, the order challenged in revision was one directing the tenant to deposit the fair rent as fixed by the Controller, in view of Section 16(1) of the Act, as if stood. That order was in consonance with the existing provision. The order setting aside of that order - assuming that it is liable to be set aside - would not wipe off the default of the tenant to deposit the rent and the consequence that followed by virtue of Section 16(2) of the Act as it then stood. The order dismissing the appeal was not as such an order merely dependent on the order to deposit the rent. There had also intervened an order striking out the defence of the tenant. Moreover, as we have noticed, even earlier, in the inter-party judgment in LPA No. 34 of 1995, the Division Bench had accepted the plea of the landlord that the order of the Appellate Authority dismissing the appeal of the tenant against the order fixing the fair rent had become final and it was not open to the tenant to canvass the correctness of the order of the Rent Controller any more. In this situation, we have no hesitation in overruling the contention on behalf of the tenant that the order of the Rent Controller fixing the fair rent at Rs. 17,950/- could be successfully challenged by the tenant in this proceeding and at this stage.

18. Even otherwise, the tenants challenge to the fixation of fair rent was considered on merits both by the Appellate Authority and by the Revisional Authority. While considering the merits of the appeal filed by the landlord, the Appellate Authority had considered the relevant aspects and materials available to fix the fair rent. Thus, even though his defence was struck off, the tenant had his arguments tested on merits by the Appellate Authority. The Revisional Authority also reconsidered the question. In this situation, on the facts of this case, no prejudice has been caused to the tenant.

19. As regards the enhancement of fair rent by the Appellate Authority and the challenge there to by the tenant, we find that the Appellate Authority has taken note of the average rent prevalent in the locality and has fixed the same as fair rent. Not even the enhancement of 25% has been given, leave alone taking note of any subsequent repairs. There is also nothing to show that the authorities

have not taken the average rent the building would have fetched for twelve months preceding. 1.12.1980 as enjoined by the statute. We may also notice, that the building is a three-storeyed one, situated in a most commercially important locality in the town, which has now become the capital of the State of Jharkhand and that the tenant is running a hotel or a lodging house therein. We must also take note of the fact that inspite of the fixation of fair rent, he has not paid the fair rent to the landlord even for a single month. His conduct in not paying the fair rent as fixed, inspite of Section 16 of the Act as it stood prior to its amendment in the year 1994, also disentitles him to any discretionary relief from the hands of this Court. We may notice that even inspite of opportunities being given by the learned Single Judge, as he has noticed in the judgment under appeal, the tenant did not pay the fair rent to the landlord and did not even offer to pay a rent which could be considered to be fair both to the landlord and to the tenant, even though it may be something less than what was fixed by the Appellate Authority and the Revisional Authority. Thus, on the facts of this case, we are satisfied that the conduct of the tenant justifies the declining of jurisdiction by this Court under Article 226 of the Constitution of India. After all, considering the circumstances as a whole, it cannot be said that there is anything Inequitable in the fair rent how fixed by the Authorities under the Act.

In this situation, we find no reason to interfere with the judgment of the learned Single Judge. We, therefore, confirm the decision of the learned Single Judge and dismiss this appeal. We make no order as to costs.