

(1993) 03 PAT CK 0047

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 6129 of 1989

Ram Adhin Singh

APPELLANT

Vs

The State of Bihar and others

RESPONDENT

Date of Decision : 15-03-1993

Acts Referred:

Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947 — Section 8(1)(c)
Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 — Section 5, 6, 7, 8(1), 8(1)(c)
Constitution of India, 1950 — Article 200, 348(3), 348(3)

Citation : (1993) 1 PLJR 637 : (1995) 2 RCR(Rent) 148

Hon'ble Judges : G.C. Bharuka, J

Bench : Single Bench

Advocate : Padma Narayan Singh, Arun Kumar Singh and Sia Ram Krishna Prasad, for the Appellant; Ranjit Prasad and Sanjay Priya for Respondent No. 5 and M/s. Ram Balak Mahto, Ram Awadhesh Singh and N.N. Ojha for the State, for the Respondent

Judgement

G.C. Bharuka, J.—The present writ application has been filed by the petitioner for quashing the order dated 29th June, 1989, passed by the Commissioner, Magadh Division, Gaya, as a revisional authority, under the provisions of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 (Bihar Act no. 4 of 1983) (hereinafter in short "1982 Act" only). The petitioner is the owner of a building in the town of Gaya, a portion whereof is under the tenancy of the respondent Magadh Gramin Bank. Municipal assessment has been made in respect of the said building. Pursuant to an agreement between the landlord and the tenant, the rent of the building was enhanced to Rs. 1000/ per month with effect from 1st January, 1985. In January, 1987 the petitioner filed an application before the House Controller for further enhancement of the rent. After enquiry, the House Controller by his order dated 15.6.1987 as contained in Annexure 3 fixed the monthly rent at Rs. 1700/- per month. The tenant having failed in appeal before the Collector, as is evident from the order dated 24.11.1987 (Annexure 4), preferred a revision before the respondent Commissioner. The Commissioner by

his impugned order (Annexure 6) has fixed the rent at Rs. 1250/- per month by holding that this is the maximum permissible rent, which can be fixed u/s 8 (1) (c) of the Act.

2. Shri P.N. Singh, learned advocate for the petitioner has assailed the impugned revisional order raising following two vital questions having a bearing on the construction and applicability of the provisions contained in Section 8 (1) (c) of the Act :

(i) Section 8 (1) (c) can not have any application to such building which has been subjected to municipal assessment; and

(ii) The proviso to section 8 (1) (c) merely provides for fixation of minimum rent and not the maximum and, therefore, there is an error apparent on the face of the impugned order.

3. To substantiate the first submission, Mr. Singh has placed reliance on a decision of this Court in the case of Chhayan Lal v. Aditya Prasad and others, reported in 1984 BLJR 132: 1984 PLJR 121 wherein while construing the provisions of Section 8 (1) (c) of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947 (Bihar Act 3 of 1947), it was held that, the expression "other buildings" as used under this clause would mean the buildings in respect of which municipal assessment had not been made. The submission is that since admittedly the building in question has been subjected to municipal assessment, therefore, the provisions of section 8 (1) (c) of the 1982 Act will not apply to the facts of the present case. While elaborating the submissions, stress has been laid on the word "other building", which, according to him, has been retained by the legislature u/s 8 (1) (c) of 1982 Act as well, which, according to Mr. Singh has consciously been done by the legislature with full knowledge of the pronouncement of this Court in the case of Chhagan Lal (supra).

4. In support of his second submission, Mr. Singh has submitted that the proviso to section 8 (1) (c) of the Act merely provides the minimum and not the maximum of the fair rent to be fixed. Learned Counsel in this respect has placed reliance on a decision of this Court in the case of Secretary, Balika Siksha Bhawan v. The State of Bihar and others, reported in 1990 (1) PLJR, 61. In this case on an interpretation of the aforesaid provisions of 1982 Act, it has been held that the aforesaid proviso does not provide anything more than the minimum of the amount which is to be fixed by the Controller as fair rent. This interpretation of clause (c) of Section 8 (1) of the Act has been given by the learned Single Judge by relying on English text of 1982 Act, which has been published in the extraordinary issue of the Bihar Gazette published on 21st February, 1983.

5. On the other hand, Learned Counsel appearing for the private respondent has submitted that in view of the provisions of Sections 5, 6 and 7 as they stand in 1982 Act, the existence of the word "other" before "building" in section 8 (1) (c) is inconsequential and even if it exists in the statute book, it should be ignored. According to him, the decision of this Court in Chhagan Lal's case (supra) has no

application keeping in view the changed legislative scheme in the 1982 Act. His further submission is that the rent control legislations in this country have been primarily enacted by the legislature for safeguarding the interest of the tenant and it will be contrary to the rules of purposive construction if it is held that in determining the fair rent, a minimum base has to be adopted without fixing any maximum thereof. Such an interpretation, according to him, will not only be detrimental to the interest of the tenants but will also be subversive to the very object of such regulatory measures and will be wholly unreasonable.

6. For proper appreciation of the rival contentions, I thought it proper to refer to the Hindi text of the Act because, as informed, the legislature has passed the Act in Hindi and the English version thereof is only the translated authoritative text under Article 348 (3) of the Constitution of India. Since I found that there are variance in the Bill as introduced in the legislature, the Hindi text of the Act and its English text as published in the gazette, I, by order dated 19.11.1990 issued notice to the Law Secretary to place on the record all the relevant facts pertaining to the passing of the Act in question with the copies of the Bill and the Act. I also requested the learned Advocate General to render his valuable assistance in the matter.

7. The respondent Law Secretary-cum-Legal Remembrancer to the Government of Bihar has filed an affidavit setting out all the relevant facts enclosing therewith copies of the Bills as these appeared at the various stages in making of the present Act as also some other documents. The facts as disclosed by the Law Secretary only speak of the casualness with which the Administrative Department of the State Government has dealt with even in relation to important functions pertaining to making, translating and publication of legislations. A comparison of the provisions of Section 8 (1) (c) as contained in the Bill at the different stages, its Hindi text as published in the extraordinary issue of Bihar Gazette dated 30.1.1983 and the English text, referred to above, reveals some startling facts because the provisions of Section 8 (1) (c) in the aforesaid Bill and the texts of Act are different on some very material aspects. Some body needs to share the blame for it. I will do better by stating all the facts as disclosed by the Law Secretary in his affidavit and setting forth the texts of the provision in this regard.

8. In the present case the Bill of the 1982 Act had originated in the Legislative Council and it was in Hindi language. In section 8 (1) (Ga) of this Bill as placed before the Council the word "Anya" after the word (KISI" and before the word "MAKAN" and the cut off date as 1st November, 1941, were printed. In the Council by an amendment the word "Anya" was deleted and the cut off date was substituted as "1st December, 1980" and after incorporating these amendments, the Bill was passed by the Council on 27th July, 1982, Copies of the Bills as placed and amended have been filed as Annexures "I" and "II", respectively. Then the Bill was passed by the Legislative Assembly on the 6th January, 1983, by incorporating a repeal and savings clause 34. Then it was transmitted to the

Legislative Council, which gave its concurrence to the same on 10.1.1983. But unfortunately in the printed copy of the Bill as authenticated by the Chairman of the Council the word "Anya" and the cut off date as 1st November, 1941, reappeared in Section 8(1)(c) of the Bill, which was on obvious printing error and the same was presented to the Governor with these errors for his assent as required under Article 200 of the Constitution. The Governor reserved the Bill for the consideration of the President on 25.1.1983 and ultimately assent was accorded to the Bill by the President on 29.1.1983. A photo copy of the Bill as assented has been placed on the record as Annexure VII, Thereafter the original Act in Hindi language was published in the extraordinary issue of the Bihar Gazette dated 30th January, 1983, with the errors as mentioned above. Its English authoritative text was published in the Gazette on 21.2.1983, containing the first error and a defective translation of the first proviso to Section 8 (1) (c) adding further confusions. Section 8 (1) (Ga) as passed by both the Houses by the legislature and its corresponding provision as they appear in the published Hindi and English texts may be reproduced hereunder :

The relevant provision of the Bill passed by the Legislature is as follows:

The Hindi text of the Act as published in the Bihar Gazette reads as follows:-

The English text of the Act reads as under:

8. Matters to be considered in determining fair rent :

(1) (a) For the purposes of this Act the fair rent of a building shall be determined as for a tenancy from month to month,

(b) The fair rent of a building shall be determined in accordance with the rules framed for this purpose.

(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 1st Day of December, 1980, and to the increased cost of repairs, and in the case of 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 low, 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 1st day of December, 1980, increase by not more than 25 per cent 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 cost or repairs or the general increase in the cost of sites and building construction, where such enhancement is admissible under the foregoing provision of this clause.

Explanation.

9. From the discussions as made above, it is now quite clear that the word "Anya" (other) appearing in Section 8 (1) (ga) before the word "building" and the cut off date as 1st November, 1941, are the result of obvious misprints and have occurred due to clerical errors. In this background, the question which immediately falls for consideration is as to whether such obvious misprints and errors can be corrected by the Court or not.

10. Dealing with somewhat similar situation in "CRAIES ON STATUTE LAW" (7th Edition at page 521), it has been said,

But if there is an obvious misprint in an Act of Parliament, the Courts will not be bound by the letter of the Act, but will take care that its plain meaning is carried out. "It is our duty", said Tindal C.J. in *Everett v. Wells* (1841) 2 M. & G. 269, 277 Cf. *R.V. Dowling* (1857) 8 E & B. 605, "neither to add to nor to take away from a statute, unless we see good grounds for thinking that the legislature intended something which it has failed precisely to express" Thus, in *Chancellor of Oxford v. Bishop of Coventry*, (1615) 10 Co. Rep. 53b, it was resolved that "when the description of a corporation in an Act of Parliament is such that the true corporation intended is apparent though the name of the corporation is not precisely followed, yet the Act of Parliament shall take effect."

11. Maxwell in its celebrated commentary on "The Interpretation of Statutes", 12th Edition, after noticing various decisions has opined that:

Mere clerical errors, or slips in drafting will sometimes be corrected.

On reference to *The Arabert* (1963) P. 102 he has said that.

Where a word appears in a consolidating statute but was not to be found in the Acts consolidated, the Court may treat it as inserted per incuriam

12. In *R. v. Wilcock* (1845) 7 Q.B. 317, it has been held that though the Act of the Parliament intended to repeal several Acts but by their title and dates including an Act passed in 13th Geo 3, but agreeing in title with stat. 17 G 3. c. 56 and with no Act passed in 13 G. 3, the Court realising that a mistake was committed by the legislature having regard to the subject matter and on looking to the content of the Act itself read Act of 13 G. 3 as Act of 17 G. 3 by expressly rejecting the incorrect year.

13. In the above view of the matter, I have no hesitation in holding that the word "Anya" (other), referred to above, as appearing in Section 8 (1) (c) is an obvious misprint and should be ignored for all legal purposes. Even otherwise in view of the scheme of the present Act, the said word in the context is superfluous and, as such, inconsequential. For the same reason the obvious misprint with regard to the cut off date in the aforesaid section has to be read as 1st December, 1980.

14. Keeping in view the law as found above, in my view the decision of this Court in the case of *Chhagan Lal* (supra) which was decided keeping in view the

language and scheme of the 1947 Act is of no assistance in the present case which is based on entirely different legislative postulates.

15. Now coming to the second limb of the argument advanced by Shri P.N. Singh to the effect that the proviso to Section 8 (1) (c) merely provides for fixation of minimum rent and not the maximum, it is necessary to first refer to the provisions of the enactment as passed by the legislature which is in Hindi and has already been quoted above. The said proviso is in two parts. The first part provides for fixation of minimum rent with reference to the cut off date as 1st November, 1941, and the second part provides for the maximum which can be fixed at not more than 25% of the aforesaid minimum rent. The translation of (the first part in English is quite consistent with the Hindi version but confusions have been created while translating the second part. The two parts of the aforesaid proviso, if properly translated, will lead as under :

FIRST PART

Provided that where the Controller is satisfied on an application made to him by the landlord u/s 5 that the rent of the building referred to in this clause is low then the Controller shall, while determining the fair rent of such building payable by a tenant fix the rent of the building which shall not be less than the average monthly rent actually paid for the same or similar accommodation by a tenant during the period of 12 months preceding 1st December, 1980. AND

SECOND PART : if, in it, there is any increase due to escalation in the cost of repair or general rise in the Cost of site and building construction then in addition thereto, where such an enhancement is admissible during the aforesaid period under the foregoing provisions of this clause, then it will not be enhanced by more than 25% of the average monthly rent received during the aforesaid period.

16. On a reading of the Act as passed by the legislature, it admits of no doubt under the proviso to Section 8 (1) (Ga) that the legislature has provided both minimum and the maximum of the fair rent, which can be fixed by the Controller. The provision as enacted by the legislature does not admit of a second interpretation. It appears that since the text of the Act in Hindi was not placed before B.P. Singh, J in Secretary Balika Bhawan's case (supra) and the translated English text was capable of two interpretations, therefore, his Lordship was constrained to hold that ;

The proviso may not be very happily worded, but its intendment is clear. It provides that in an application made by the landlord for fixation of fair rent on the ground that the rent being paid by the tenant is low, the Controller shall fix the rent at a figure which shall not be less than the average of 12 months rent payable before 1.12.1980 increased by 25%. The proviso does not provide anything more than the minimum. It does not provide for a maximum otherwise it could have been simply stated that rent shall not be less than 12 months average rent paid immediately before 1.12.1980, and not more than 25% over and above such rent.

(emphasis is mine)

17. Now it is well settled that if the Act is passed by the legislature in Hindi and if there is any conflict between original text and its translated English text under Article 348(3) of the Constitution, then, the provisions as contained in Hindi text will prevail. In this connection reference may be made to the decision of the Court in the case of Chanda Nath Vs. Janak Kishore Devi and Others wherein it has been held that;

.....in the case of inconsistency or contradiction in the original Hindi text of the legislation and its authoritative English text, translated and published pursuant to Article 348(3) of the Constitution, Hindi text has to prevail My view finds support from a Bench decision of this Court in Rajendra Prasad v. Vice Chancellor, Magadh University, reported in 1984 PLJR, 316 wherein it has been said that, "The English translation, though official, cannot override the Hindi text. The English version is the interpretation of the person entrusted with the task of translation. It cannot be equated with the original text." A similar view was expressed by S.B. Sanyal, J. in the case of Shyam Lal Sah v. State of Bihar, reported in 1987 PLJR, 482.

18. In view of the provisions contained in the proviso to Section 8 (1) (c) of the Act in the Hindi text of the legislation, it is to be held that the judgment of this Court in the case of Secretary, Balika Siksha Bhawan (supra) is per incuriam and, therefore, has no binding effect as stare decisis.

19. In the above view of the matter, in my considered opinion, the view taken by the learned Commissioner in its revisional order that the fair rent can not be enhanced by more than 25% of the average rent fixed with regard to the cut off date as prescribed u/s 8 (1) (c) of the Act is correct, and needs no interference by this Court.

20. Before parting with this case I must put on record the apathy and a casualness with which the Administrative department of the Government dealing with the legislation in question has acted. It has been stated by the Law Secretary in his affidavit that when the errors came to the notice of the Secretary, Bihar Legislative Council, it was duly communicated to the Administrative Department, which, at that time, was Food and Supply Department and, now, the Urban Development Department, for taking appropriate steps to remove the discrepancies but the concerned department did not take any action so far. Similar advice also appears to have been given by the Law Department but again of no avail.

21. Keeping in view the above facts, in my opinion, the petitioner and the private respondent has to enter into this futile litigation primarily because of carelessness shown by the State Government or its officers even in dealing with the important function and duties relating to printing and translation of enactments. Therefore, the Development Commissioner is directed to pay Rs. 2,500/- (Rupees two thousand five hundred) only to each of the petitioner and

the respondent no. 5 as costs. This payment should be made by crossed draft addressed to the petitioner as well as to the respondent no. 5 within a month from the date of the communication of this judgment. It is also directed that the Administrative department should immediately undertake the publication in the official Gazette of correct texts of the legislation in question both in English as well as in Hindi. For the reasons aforesaid, the writ application is dismissed subject to the cost as awarded. Let a copy of this judgment be sent to the Advocate General for being remitted to the Chief Secretary & Development Commissioner.