

(2006) 02 PAT CK 0013
In the Patna High Court
Case No : CWJC No. 13369 of 2003

Ram Prit Rao

APPELLANT

Vs

the State of Bihar and Others

RESPONDENT

Date of Decision : 06-02-2006

Acts Referred:

Constitution of India, 1950 — Article 7, 8

Citation : (2006) 2 PLJR 245

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

Bench : Single Bench

Final Decision : Allowed

Judgement

S.K. Katriar, J.—Heard Mr. Manan Kumar Mishra for the petitioner, Mr. Ambuj Nayan Choubey for respondent Nos. 1 and 2, and Mr. Lala Sachindra Kumar for respondent No. 3. This writ petition has been preferred with the prayer to quash Certificate Case No. 26 of 2003, pending before the District Certificate Officer, Bettiah. According to the writ petition, the petitioner is a tenant from the court of wards and is in occupation of the house in question for residential purposes, situate in the township of Bettiah, on a monthly rental. The tenancy had commenced on a monthly rental of Rs. 107/- per month which went on up to February 2000, and was enhanced to Rs. 800/- per month with effect from March, 2000. The petitioner fell in arrears leading to the certificate proceedings.

2. While assailing the validity of the impugned action, learned counsel for the petitioner submits that the enhanced house rent cannot be realised through certificate proceedings in view of the bar engrafted in Clause-8 of Schedule-I of the Bihar and Orissa Public Demands Recovery Act, 1914 (hereinafter referred to as the "Act") for two reasons. The enhanced rent cannot be realised unless the same has been agreed to by the person liable to pay the same or has been confirmed by a competent authority which is absent in the present case. He also relies on Note-1 to Clause-8 of Schedule-I of the Act and submits that the certificate procedure cannot be applied to recovery of such rents, unless by a

written instrument, duly registered, the persons liable to pay such rents have agreed that they shall be recoverable as public demands. In his submission, in the present case, it has not been agreed to by the petitioner, let alone the same being incorporated in a registered document.

2.1) Learned counsel for the petitioner next submits that the impugned demand notice dated 16.8.2003 (Annexure-4) is not in the prescribed proforma. He further submits that this is a mandatory provisions of law and failure to observe the same would be fatal to the certificate proceedings. He relies on the following reported judgments:

(i) 1981 P.L.J.R. 86 (Tata Engineering & Locomotive Company Limited vs. The District Mining Officer & Cess Collector (Mining) and The State of Bihar);

(ii) 1998(2) P.L.J.R. 498 (Jai Prakash Dwivedi vs. The State of Bihar and Ors.);

(iii) 1996(2) P.L.J.R. 698 (Satya Narain Jhunjhunwala vs. The State of Bihar and Ors.).

3. Respondent No. 3 has placed on record his counter affidavit and has opposed the writ petition.

4. I have perused the materials on record and considered the submissions of learned counsel for the parties. \i appears to me that enhancement of rent of the premises in question with effect from March 2000, was as per the order dated 29.3.2000, passed by the learned Sub-divisional Officer-cum-Rent Controller, Bettiah, in Case No. 20 H.C./97 (Annexure-2). The same was upheld in appeal, whereby the present petitioner's appeal bearing No. R.M. 66 of 2000-01 (Ramprit Rao vs. Bettiah Raj), vide order dated 8.5.2005, was dismissed by the learned Collector of the district of West Champaran, Bettiah. Learned counsel for respondent No. 3 has placed on record a copy of the same with copy whereof to learned counsel for the petitioner. It is thus manifest on the fact of it that the enhancement of rent was sanctioned by the learned Rent Controller and upheld in appeal, The contention, is therefore, rejected.

5. Insofar as the second part of the submission is concerned, Clause-8 of Schedule-1 of the Act is set out hereinbelow for the facility of quick reference:

"8. In the case of property which under the provisions of any law for the time being in force, is under the charge of or is managed by the Court of Wards or the Revenue-authorities on behalf of private individual-any arrear of rent, or of any demand which is recoverable as rent, whether such arrear became due before or after the management devolved upon such Court or such authorities:

Provided that this clause shall not apply to any arrears of rent at an enhanced rate unless enhanced rate has been agreed to by the person liable to pay the same or has been confirmed by a competent Court.

Note 1- The Act does not apply to rents of houses and shops and the certificate procedure cannot be applied to the recovery of such rents, unless by a written

instrument, duly registered, the persons liable to pay such rents have agreed that they shall be recoverable as public demands.

Note 2.-In trust estates managed by Government as express trustee, arrears of rent are recoverable under Article 7. In attached estates managed by the Revenue authorities on behalf of private individuals, arrears of rent are recoverable under Article 8."

It is manifest on a plain reading of Note 1 that the certificate procedure cannot be applied to the recovery of such rents, unless by a written instrument duly registered, the persons liable to pay such rents have agreed that they shall be recoverable as public demands.

(Emphasis added)

6. I find it difficult to agree with the submission advanced by learned counsel for respondent No. 3 that the proviso cannot control the main part of Clause-8. The expression "...of such rents..." occurring in Note-1 completely repels the objection of respondent No. 3 which obviously refers to such rents referable in main part of Clause-8. The petitioner has in the writ petition stated that there is no written instrument, let alone having been registered. Respondent No. 3 has also not made any attempt to counter this part of the submission, let alone placing on record a copy of registered instrument. I, therefore, conclude that there is no written instrument between the parties duly registered, whereby the petitioner has agreed that it shall be recoverable as public demand. The petitioner's contention is, therefore, upheld. The certificate proceeding cannot, therefore, proceed in view of the bar engrafted in Note-1 to Clause-8 of Schedule-I of the Act.

7. In view of the discussion hereinabove, I do not feel the necessity of examining the last submission advanced on behalf of the petitioner. In the result, this writ petition is allowed. The certificate proceeding bearing Certificate Case No. 26 of 2003 cannot proceed, and is hereby quashed.