
(1995) 07 PAT CK 0011
In the Patna High Court
Case No : C.W.J.C. No. 6395 of 1994

Saraswati Devi and Others

APPELLANT

Vs

Commissioner of Bhagalpur Division

RESPONDENT

Date of Decision : 05-07-1995

Acts Referred:

Citation : (1995) 07 PAT CK 0011

Final Decision : Dismissed

Judgement

B.L. Yadav, J.—By the instant writ petition under Articles 226 and 227 of the Constitution of India the prayer of the tenant is that the order dated 7.12.1992 (Annexure-4) passed by the House Rent Controller u/s 5 read with Section 8 of Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 (compendiously the Act) passed in an application for enhancement of rent and the order of the Collector and Commissioner of Bhagalpur (Annexs-5 and 6) dated 8.2.1994 and 30.5.1994 respectively enhancing the rent from Rs. 135/- to Rs. 1862/- be quashed by issuing writ of certiorari.

2. So much of the facts necessary for the disposal of this petition are these:

The Respondent No. 4 is the owner-cum-landlord of the disputed premises. Prior to him Kedar Nath Sah was the original tenant and after his death Respondent No. 4 purchased the accommodation, Old holding No. 1098, New holding No. 69 situated on Station Chowk, Shujaganj Bazar Road, present ward No. 16 in the city of Bhagalpur, from the original owner/landlord and this is how he stepped into the shoes of the original owner. Sri Sah, original tenant was paying Rs. 135/- per month as rent. Present Petitioners are in occupation of 1000 sq. feet. covered area. An application was filed by the owner of the building for enhancement of rent keeping in view the area covered. Prayer was made that rent may be enhanced to the extent of Rs. 4000/- per month (vide application Annexure-1).

3. The application for enhancement of the rent was contested by the Petitioners,

tenant with the averments that the building was a part of Tilak Babu's Hat. The land was in dilapidated condition and was settled with the ancestor of Kedar Nath Sah with the permission of the landlord. The tenant renovated the building and carried their business of sweetmeat. Landlord, Respondent No. 4, never objected to construction of the building. Originally the ground rent was only Rs. 30/- which was later on enhanced to Rs. 135/-. The building was purchased by Respondent No. 4 along with other shops in July, 1969.

4. The Rent Controller vide order dated 7.11.1992 fixed the fair rent at Rs. 1862/- (vide Annexure-4). The Petitioners filed an appeal before the Collector, Bhagalpur which was dismissed for default on 8.2.1994 at the stage of admission (vide Annexure-5). Petitioner's revision before the Commissioner, Bhagalpur was also dismissed on 30.5.1994 (Annexure-6).

5. Against these orders present petition has been filed with the usual prayer to quash these "orders" (Annexures-4, 5 and 6).

6. Sri S.K. Majumdar, the learned senior Counsel for the Petitioners contended that on a correct interpretation of Section 8(1)(c) and its Proviso the rent cannot be enhanced beyond that payable on 31.12.1980 and in any case even if some enhancement was to be made that cannot be more than 25% as provided in the Proviso itself. He leaned heavily on two single judge decisions of this Court in Ram Adhin Singh Vs. The State of Bihar and others, and Bihar State Madarasa Education Board, Patna Vs. Madarasa Hanfia Arabic College Jamalila and Others,

7. Sri Shashi Sekhar Dwivedi, the learned senior Counsel for the Respondents contended that interpretation to a statute of predominant social nature has to be made in that light. Proviso of Section 8 has to be read along with provision of Section 8(1) (c) of the Act and Rule 3 of Bihar Buildings (Lease, Rent and Eviction) Control Rules, 1983 (compendiously the Rules) has also to be taken into account. These are benignant provisions from the point of view of landlord. The cases cited by learned Counsel for the Petitioners actually do not help the Petitioner.

8. Sri V.N. Sinha appearing for the State has contended that the impugned order was perfectly correct as it was quite consistent with the provision of Section 8(1) (c) and its Proviso read with Rule 3 of the Rules. These are beneficial statute from the point of view of landlord and may be interpreted in that light. The main function of Proviso is to carve out an exception to main enactment, but at the same time it cannot normally be interpreted so as to set at naught the main enactment. In other words to qualify the meaning of the main provision. Sri Sinha leaned heavily on S. Sundaram Pillai and Others Vs. `R. Pattabiraman and Others, and A.N. Sehgal and others Vs. Raje Ram Sheoram and others, and also Tribhovandas Haribhai Tamboli Vs. Gujarat Revenue Tribunal and others,

9. Having given out thoughtful considerations to the points sharply focussed by learned Counsel for the parties, primarily two questions fall for our determination. The first is whether the provisions of Section 8(1)(c) of the Act

and its proviso read with Rule 3 of the Rules are benevolent legislation in favour of landlord, if so, how it is to be interpreted and the next is whether the application for enhancement of rent has been correctly decided.

10. As regard the first question the provisions of Section 8(1)(c) read with Rule 3 of the Rules may be construed keeping in view certain cardinal rules of construction of statute. No doubt the Act contains certain provisions i.e. Section 8 with its Proviso and Rule 3 of the Rules and Section 11 (in part) and similar other provisions which have been enacted for the benefit of the landlord, such provisions have to be interpreted with the dominant purpose of the legislation. A Court should stop short of altering the character of a statute. The Apex Court has pointed out in *Arjun Khiamal Makihijani v. Jamna Das C. Tuliani and Ors.* (judgment Today 1989 (4) SC 74) while interpreting Sections 12(3) and 15 of Bombay, Hotel and Lodging House Rates, Control Act, 1947, as follows:

When the Act contains provisions none of which fall under the category of beneficial legislation with regard to the tenant and other provisions with regard to the landlord, the assertion that even with regard to such provisions of the Act. Which fall under the purview of beneficial legislation for the landlord, an effort if made to interpret that also in favour of the tenant is the negation of the very principle of beneficial legislation, on which reliance is placed on behalf of the tenant. The argument indeed is self defeating and only justifies the cynical proverb "Head I win, the tail you lose.

11. The Act in our considered opinion contains certain beneficial provisions i.e. Sections 5, 7, 8 and partly Section 11, contain beneficial provisions for landlord where as certain other provisions i.e. Section 9, 10 and partly Section 11, are pieces of beneficial legislation for tenants. The provisions of beneficial legislation has to be given wider interpretation. In construing social beneficial legislation the Court has to adopt a social beneficial rule of construction. A beneficial legislation for the interest of landlord, even if capable of two interpretations that construction has to be adopted which projects the policy of the legislation and is more beneficial to the person in whose favour these provisions have been enacted. (See *Jeewanlal (1929) Ltd. Vs. Appellate Authority under the Payment of Gratuity Act and Others*, and *Ramji Missir and Another Vs. The State of Bihar*, . To put it differently the approach to a statute of predominant social nature, has to be made in that light. The Court must take a broad view of the background of the policy of the statute in question. In such matters the Court has to make purposive approach in order to make a correct construction of a benevolent provision. (See *Summars v. Seaford Corporation* (1943) A.C. 283; *Oketake v. Brant London Borough Council* (1967) QB 42, *Brown v. Brach and Ambrose* (1948) (All E.R. 922) 1991 Suppl. (2) S.C.C. 228, *Othayath Lekshmy Amma and Another Vs. Nellachinkuniyil Govindan Nair and Others*,

12. In our opinion, a beneficial statute particularly Section 8 must not be construed too rigidly and restrictively rather it has to be construed liberally, in favour of the person for whose benefit the particular provision has been enacted.

Section 8 of the Act is a piece of statute of a predominantly social nature particularly in favour of owner of the building, the landlord, hence a purposive approach has to be made with special care, so that the main object of the legislature may not be defeated.

13. What Section 8(1)(c) postulates is broadly the factors to be taken into consideration while determining fair rent on an application for fixation of fair rent or for enhancement of the rent is filed by the landlord under Sections 5 and 6 of the Act. It has to be decided keeping in view the provisions of Rule 3(ii) of the Rules having due regard to the prevailing rate of rent in the locality for the similar accommodation and in similar circumstances at any time during 12 months preceding the date of order. But over and above that the rent may also be enhanced keeping in view increased cost of repairs the amenities provided and the compound or open land, type of construction and location of building etc.

14. A proviso has been added to Section 8. Normally function of a Proviso is to take out something from the main enactment or in some cases to carve out an exception to main enactment. But at the same time it is not to be so interpreted as to set at naught the main enactment. In *S. Sundaram Pillai and Others Vs. R. Pattabiraman and Others*, relied upon by Mr. Sinha the learned Counsel for the State, their Lordships of the Apex Court observed under para 42 (page 592) as follows:

A proviso may have four different purposes:

- (1) qualifying or excepting certain provisions from the main enactment;
- (2) it may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make" the enactment workable;
- (3) it may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself, and,
- (4) it may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision.

15. In the present case even though Section 8(1)(c) provides as to how the application for fair rent or its enhancement has to be decided. Broadly speaking it has to be decided, keeping in view the prevailing rate of rent in the locality for similar accommodation in similar circumstances. But primarily it has to be decided keeping in view the prevailing rate of rent of similar accommodation within 12 months preceding 1st day of December, 1980, which was cutoff-date for the purpose of enhancement of rent. For every cut-off-date there remains legislative intendment behind it. Why 1st December, 1980 was fixed the cut-off-date, the reason is that the Ordinance No. 63 of 1982 was promulgated with retrospective effect. Thereafter, the Act was passed which received the assent of President on 31st January, 1983 and was published in Bihar Extra Ordinary

Gazette and it was deemed to have come in force from 1st April, 1981. It repealed the Ordinance of 1982 which was retrospective. With a view to cover the date before the Ordinance 1st December, 1980 was fixed cut-off-date. This is how it has been provided u/s 8(1)(c) that the prevailing rate of rent in the locality during 12 months preceding the 1st day of December, 1980 shall be the guiding factor. But what the Proviso emphasises is that fair rate of rent shall be at a figure, which shall not be less than the average monthly rent paid by a tenant for similar accommodation over 12 month period prior to 1st December, 1980. On this minimum fair rent the Proviso adds increase of twenty five percent of the average monthly rent, on account of cost of repairs or the general increase in the cost of site etc. In this way the proviso has broadened the contours of the main provision of Section 8(1)(c). The provisions in the Proviso have to be treated as an integral part of the main provision. The provisions of Rule 3(ii)(a) to (g) also takes into account the provisions of the Proviso to Section 8. In our opinion the enhancement of rent under the impugned order cannot be said to be contrary to the provisions of Section 8(1)(c), including its proviso.

16. Coming to the cases relied upon by learned Counsel for the Petitioners, Ram Adhin Singh Vs. The State of Bihar and others, was the case decided in respect of application filed under Sections 5, 6 and 8 for the fair rent and much emphasis was laid, on Hindi version of Section 8 and its English version and distinction between the two, as to whether Hindi version must prevail or English version must prevail. It was held that Hindi version must prevail in case of conflict. But in brief the object of the Proviso was also indicated under para 16. The next case in Secretary, Balika Siksha Bhawan, Ranchi and Another Vs. State of Bihar and Others, was decided by Brother B.R Singh, J. (for, whom we have profound regards) and the decision was held per incuriam by Hon"ble Brother G.C. Bharuka, J" in Ram Adhin Singh v. State of Bihar and Ors. (supra). It was however, observed that it was open to the Controller to fix higher amount of rent by way of fair rent having regard to the provisions of Section 8 of the Act and Rule 3. The object of legislature, however, in enacting Section 8(1)(c) and its Proviso has not been considered in that case. Section 8(1)(c) and its Proviso and Rule 3 in our opinion is couched in language having very wide sweep, it is a piece of beneficent piece of legislation enacted keeping in view the welfare of the landlord. It has to be interpreted keeping in view the dominant purpose. Section 8 and its Proviso and Rule 3, need not be interpreted in a restrictive manner.

17. As regard the second question, we have perused the impugned orders. In our opinion the application for enhancement of rent has been correctly decided. We do not find any merit in the submission of the learned Counsel for the Petitioner. We derived however much assistance from the illuminating submission of Sri V.M. Sinha, appearing for the State.

18. In view of the premises aforesaid we do not find any merit in the instant petition and the same is dismissed without any order as to costs.