
(2010) 06 JH CK 0034
In the Jharkhand High Court
Case No : Writ Petition (C) No. 1805 of 2004

Shri Krishna Sharma

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 12-06-2010

Acts Referred:

Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 — Section 24(2), 5, 5(1), 6, 7

Citation : (2010) 58 BLJR 908

Hon'ble Judges : R.K. Merathia, J

Bench : Single Bench

Advocate : S.K. Sharma, for the Appellant; Neelam Tiwary, for the Respondent

Final Decision : Allowed

Judgement

R.K. Merathia, J.—Heard the parties.

2. This writ petition has been filed for quashing the order dated 23.9.2003, passed by the Commissioner (respondent No. 2) in H.R.C. Revision No. 72 of 2000, dismissing the revision and also the order dated 9.7.2000, passed by the Deputy Commissioner (respondent No. 3) in Appeal Case No. 104 of 1999, setting aside the order dated 2 1.3.1996, passed by the Sub-divisional Magistrate cum Rent Controller (respondent No. 4), whereby he directed the Divisional Forest Officer, State Trading Division, Chatra (respondent No. 5) (hereinafter referred to as the tenant) to pay Rs. 1400/- per month as monthly rent, to the petitioner (hereinafter referred to as the landlord).

3. The facts, in short, are as follows. Under an agreement dated 20.1.1986, the premises in question covering an area of 1265 sq ft. was given on monthly rent of Rs. 800/- per month to the tenant for running it's office.

4. After about 9 years, on a written representation dated 3.5.1994 of the landlord for enhancing the rent, the tenant wrote a letter on 23.3.1995 (Annexure-2) to the Rent Controller, recommending enhancement/fixation of fair

rent between Rs. 1300/--1400/- per month in view of the increase in rent after Chatra became a District.

5. It further appears that while replying to the Conservator of Forest, the tenant wrote that the landlord has filed a case for enhancement of rent, and that he may be permitted to pay rent at the rate of Rs. 1400/- per month with effect from 1.4.1994 so that the office may continue in the premises in question. It was also said that there was difficulty in getting house on rent after creation of Chatra as District and that the rent was also increased considerably.

6. In the case filed by the landlord for enhancement of rent, being H.C. Case No. 2/1995, the Rent Controller, directed the Assistant Engineer, P.W.D. Building Division Department, who in turn authorised the Junior Engineer to enquire and report about the fair rent of the premises in question. The Junior Engineer found that the plinth area of the premises was 1265 sq ft.; the building was new with Pucca floor and RCC roof, with water, electricity and toilet facility. He recommended that the rent may be fixed @ Rs. 1500/- per month. The Assistant Engineer approved and forwarded the said report to the Rent Controller. The Rent Controller issued notice to the tenant for filing objection, if any, to the said report. Accordingly, an objection dated 24.2.1996 (Annexure-4) was filed by the tenant saying only- that the proposed rent is about double the existing rent, though it was said that keeping in view the increase in the rent, fair rent may be fixed.

7. By order dated 21.3.1996, the Rent Controller, after considering the said objection, fixed Rs. 1400/- per month payable by the tenant to the landlord from the date of application. The Rent Controller also took into consideration that the plinth area was 1265 sq ft. and the building was new with pucca floor and R.C.C. Roof with facility of water, electricity and toilet etc.

8. After about 2 years i.e. on 6.6.1998, the tenant filed an appeal before the Deputy Commissioner cum Collector, which was registered as Case No. 104 of 1999. The appeal was disposed of by order dated 9.7.2000. The appellate authority concluded as follows:

Hence from the discussion above it is observed that the rent controller's order dated 21.3.1996 suffers from the following inherent defect:

(a) that the learned rent controller has not recorded his satisfaction and the reasons to believe that the rent of the building was low on excessive as required u/s 5(1) of the Act.

(b) that the Rent controller has based his finding only on the report of the Assistant Engineer Buildings Department vide letter No. 181 dated 13.10.95 while the Act requires that the fair rent be determined keeping view of the rent of similar premises in the same locality.

Hence for grounds mentioned herein above, I using the powers vested in me u/s 24(2) of the Act hereby set aside the order passed by the Controller dated

21.3.1996 and direct the appellant to continue paying Rs. 800/- per month as before.

9. It may be noted that the tenant itself said that within a period of 9 years, the rent has enhanced considerably, specially after Chatra became a District, and therefore the observation of the appellate authority that the Rent Controller initiated the proceeding for fixation of fair rent without recording whether rent fixed, was low or excessive, is uncalled for. It is also pertinent to note that the tenant did not challenge the report of the Junior Engineer/Assistant Engineer regarding the plinth area, and the condition of the building etc. The only objection was that the suggested rent would be about double the existing rent.

10. It may also be noted here that the tenant did not raise any objection before the Rent Controller, that the area of the tenanted premises was reduced by the landlord, and for the first time, such plea was raised before the appellate authority. Thus there was no occasion for the Rent Controller of taking any decision on this aspect. Even the appellate authority did not care to get an enquiry done whether the area in occupation of the tenant was reduced to 1060 sq ft. or not, but only on the basis of a purported letter No. 392 dated 26.5.1995, the appellate authority held that the tenanted area was reduced from 1265 sq ft. to 1060 sq ft. by the landlord.

11. Thus, in my opinion, the appellate authority wrongly set aside the order of Rent Controller and directed the tenant to continue to pay Rs. 800/- per month as before.

12. The tenant preferred revision, which was registered as H.R.C. Revision Case No. 72 of 2000. It was dismissed mainly on the ground that the rent was already fixed in terms of Section 5 of the Bihar Building (Lease, Rent & Eviction) Control Act, 1982 and in the absence of the circumstances mentioned in Section 7, there could be no redetermination of rent.

13. Section 5 provides for determination of fair rent of buildings in occupation of tenants on the application of landlord or tenant if the Controller has reason to believe that the rent of the building is low or excessive by holding a summary enquiry and recording a finding. In the present case, the rent of the tenanted premises, being a Government building was required to be fixed by the Rent Controller. Accordingly, in the year 1986, it was fixed @ Rs. 800/- per month. After about 9 years, the tenant requested the landlord to enhance the rent. The landlord being satisfied with the request, recommended for enhancement of rent. An enquiry was made by the Rent Controller. Objection of the tenant was invited on the enquiry report. The only objection was that the proposed rent will be about double of the existing rent. In those circumstances, the Rent Controller accepting the enquiry report fixed Rs. 1400/- per month from the date of application.

14. There is no bar that, if fair rent has been fixed u/s 5 of the Act, the landlord or the tenant cannot apply for re-fixation of fair rent by increasing or decreasing

it, if there is change in the circumstances. In this case, the rent was sought to be redetermined after about 9 years. Section 7 provides for a different situation. It provides for re-determination of fair rent after it was fixed under Sections 5 or 6 when it appears to the Controller that subsequent to earlier determination, some addition, improvement or alteration not included in the repairs, which the landlord is bound to make under any law, contract or custom, has been made to the building at the landlord's expense, the Controller may after making such enquiry redetermine the fair rent of the building. This is not a case attracting Section 7. There is nothing to show that the tenant ever called upon the landlord to make any repairing work or to adjust the rent against the expenses of repairing etc.

The judgment of Ashok Kumar Choukhani reported in 2006 (4) JLJR 157 relied by learned Counsel appearing for the petitioner supports the case of the petitioner.

15. In the facts and circumstances, noticed above, and for the reasons aforesaid, the impugned orders passed by the appellate and revisional authorities are set aside and the order of Rent Controller dated 21.3.1996 is restored.

16. It appears that the premises was vacated in the year 2003. The respondent No. 5 is directed to pay the rent to the petitioner in terms of the order dated 21.3.1996 passed by the Rent Controller in case No. 2 of 1995, after adjusting the rent already paid for the period in question, if any, within three months from the date of receipt/communication of this order, failing which the respondents will be liable to pay interest also at the rate of Rs. 6% per annum.

With these observations and directions, this writ petition is allowed.