
(2015) 09 PAT CK 0054

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 17050 of 2013

Zeauddin Ahmad

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 08-09-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 09 PAT CK 0054

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Advocate : Khurshid Alam, for the Appellant

Final Decision : Allowed

Judgement

Rakesh Kumar, J—Heard Sri Md. Khurshid Alam, learned counsel for the petitioner and learned AC to GP No. 27.

2. The petitioner, who is the landlord has approached this court invoking its writ jurisdiction under Article 226 of the Constitution of India, with a prayer to quash an order dated 16.3.2013/19.3.2013 passed in Misc. Case No. 196 of 2012-13 and it has further been prayed that after setting aside the impugned order direction may be given to the respondents to pay the due fair rent as fixed by the House Controller with interest.

3. Short fact of the case is that the respondent No. 3 who had occupied the premises of the petitioner for running of Additional Primary Health Centre filed an application before the House Controller under the provisions of Bihar Building (Lease, Rent And Eviction) Control Act, 1982 for fixing of fair rent. After filing of the application it appears from the order dated 27.8.2005 passed in House Control Rent Fixation Case No. 13 of 2004-05, 7 of 2005-06 that the House Controller before proceeding with the case obtained a report from the Circle Officer, Hussain Ganj. The report of the Circle Officer suggests that the respondents had taken about 2640 Square Feet Area on rent. The House

Controller on the basis of report of the Circle Officer by its order dated 27.8.2005 fixed the fair rent and also calculated the arrear rent. The total arrear rent as per the order of the House Controller had come to Rs. 7,18,080/- i.e. the rent from the year 1990 till 2005. Even though the House Controller had fixed the fair rent the respondents were not paying rent to the petitioner and as such, the petitioner was constrained to approach this court invoking its writ jurisdiction vide CWJC No. 23613 of 2012 with a prayer to direct the respondents to pay the arrear rent as directed by the House Controller. From the order dated 5.3.2013 passed in CWJC No. 23613 of 2012 it appears that the writ petition stood disposed of keeping in view the fact that against the order of the House Controller an Appeal was filed. Subsequently, the learned Collector, Siwan, passed the impugned order on 16.3.2013 in Misc. Case No. 196 of 2012-13. The learned Collector again sought for a report, and thereafter, he has considered that only an Area of 424 Square Feet was being used by the respondent/tenant. Accordingly, the learned Collector has allowed the Appeal in part. Aggrieved with the order of the Appellate Authority, the petitioner approached this court by way of filing the present writ petition.

4. In this case, a counter affidavit on behalf of the respondent No. 3 was filed, which has also been replied by the petitioner.

5. Learned counsel for the petitioner submits that the House Controller had fixed the fair rent not on the basis of application filed by the petitioner, rather the respondent No. 3/Civil Surgeon-cum-Chief Medical Officer, Siwan, himself had filed an application for fixation of fair rent. He submits that after the fair rent was fixed by the House Controller, the Civil Surgeon vide Annexure - "4" i.e. letter No. 422 dated 16.12.2005 requested the Secretary, Health Department for allotment of fund for payment of rent to the tune of Rs. 7,65,600/-. He further submits that even though earlier request was made by the Civil Surgeon for allotment of fund for payment of rent, since no rent was paid by the tenant for considerable time, the petitioner was lastly constrained to approach this court by filing a writ petition vide CWJC No. 23613 of 2012. In the said writ petition twice time was granted for filing counter affidavit. This court in CWJC No. 23613 of 2012 has also observed that ".....in the meantime, the court expects the legitimate dues to be paid in accordance with law.....". He submits that despite observation of this court earlier no counter affidavit was filed, however, during the pendency of the writ petition without any rhyme and reason the respondents approached the Collector in the garb of filing an Appeal. According to learned counsel for the petitioner the Appeal was required to be filed within fifteen days from the date of order of the House Controller, but without any plausible explanation, during the pendency of the earlier writ petition, the so - called Appeal was filed by the respondent No. 3 which was registered as Misc. Case No. 196 of 2012-13. Though, no plausible explanation was given for condoning delay and despite objection raised by the petitioner on the ground of delay, the learned Collector, in a mechanical manner, has allowed the Appeal i.e. the Misc. Case and altered the order passed by the House Controller. He submits that the order of

the House Controller was passed on the basis of the report submitted by the Circle Officer and only thereafter, fair rent was fixed by the House Controller. Once the order of the House Controller was not complied and petitioner approached this court for a direction to pay rent in terms of the order of the House Controller, at least, after expiry of such a long time, the Collector was not at all authorized to entertain the Misc. Case, which was filed in the garb of an Appeal. In any event, he submits that once the Area under occupation of the tenant was specified by the House Controller on the basis of the report of the Circle Officer, the learned Collector in 2013 i.e. after lapse of about more than seven years from the date of order of the House Controller was not entitled to reduce the occupied area by the tenant from an Area of 2640 Square Feet to 424 Square Feet. He further submits that order of the Collector does not indicate that before the time or at least at the time of the order passed by the House Controller 2640 Square Feet was not in occupation of the tenant. In view of the facts and circumstances, he makes a prayer for setting aside the impugned order.

6. Learned State Counsel has vehemently opposed the prayer of the petitioner. By way of referring to certain statements made in the counter affidavit he submits that the learned Collector was justified in modifying the order of the House Controller. He submits that the learned Collector before passing of impugned order had also got a report and thereafter, the order was passed. He submits that as per the report it was a clear cut case that only two rooms for Total Area of 424 Square Feet was occupied by the respondent No. 3 and as such, according to learned counsel for the State, the order requires no interference.

7. Besides hearing learned counsel for the parties, I have also perused the materials available on record. On going through the order of the House Controller, which is at Annexure - "3" it is evident that the House Controller before fixing the fair rent had obtained a detailed report from the Circle Officer. From the order it is evident that the respondent No. 3 had occupied five rooms with all facilities. The house was found in a very good condition, and as such, fair rent was fixed by the House Controller. The House Controller had noticed that total 2640 Square Feet Area was given on rent to the respondent No. 3 by the petitioner. Moreover, the order of the House Controller was passed long back on 27.8.2005. Since despite the order of the House Controller the respondents were not paying rent to the petitioner, the petitioner was constrained to approach this court by filing the writ petition as indicated hereinabove. The writ petition was filed in the year 2012. At least, till the date of filing of the writ petition and even during the pendency of the said writ petition, for considerable period, the respondent/tenant had not approached the learned Collector. Only once, this court observed that in case of non - filing of counter affidavit, a Cost of Rs. 2000/- will be imposed, it appears that in hectic manner, a petition was filed before the learned Collector, Siwan, which was registered as Misc. Case No. 196 of 2012-13. Against the order of the House Controller under the B.B.C. Act, there was provision for filing Appeal, but to the reasons best known to the respondent

No. 3 a Misc. Case was filed. Of - course along with the petition, it appears, that a limitation petition was also filed, but the order of the learned Collector does not specify as to whether the reasons which were explained by the respondent was reasonable for condoning the delay. It is a fact that the respondent No. 3 had approached the learned Collector during the pendency of the earlier writ petition i.e. CWJC No. 23613 of 2012. Moreover, the learned Collector has not bothered to notice as to whether on the date of earlier inspection, which was conducted by the Circle Officer in Fair Rent Case No. 13 of 2004-05 the Total Area i.e. 2640 Square Feet was in use of the tenant or not. No such indication has been given. Only on the basis of a so - called report which was obtained by the learned Collector, the learned Collector has reduced the Area in occupation by the tenant from 2640 Square Feet to 424 Square Feet. No plausible reason has been given by the Collector for reducing the same.

8. In view of the facts and circumstances particularly, the fact that the so - called Misc. Case in the garb of an Appeal was filed during the pendency of the earlier writ petition i.e. CWJC No. 23613 of 2012 and without any plausible explanation for delay of about seven years and the fact that the House Controller had fixed the fair rent on the basis of the report of the Circle Officer in a case preferred by the respondent No. 3, the learned Collector has grossly erred in altering the order of the House Controller by the impugned order. Accordingly, the order impugned i.e. the order dated 16.3.2013/19.3.2013 passed in Misc. Case No. 196 of 2012-13 is hereby set aside. The respondents are directed to take steps to clear/pay all the due arrear rent to the petitioner in terms of the order of the House Controller within a period of three months from the date of receipt production of a copy of this order, failing which, the petitioner shall be entitled to claim interest @ 12% on the entire arrear, which is to be calculated from the date of the order of the House Controller till the date of payment. It is made clear that in case of payment of penal interest, the respondent/State would be entitled to realize the same from the pocket of the employee/officer responsible for delay in implementing the order.

9. The writ petition stands allowed.