

**Court No. - 40**

**Case :-** WRIT - C No. - 13070 of 2022

**Petitioner :-** Kanchan Devi

**Respondent :-** State Of U.P. And 3 Others

**Counsel for Petitioner :-** Pradeep Kumar Upadhyay

**Counsel for Respondent :-** C.S.C.

**Hon'ble Mahesh Chandra Tripathi,J.**

**Hon'ble Prashant Kumar,J.**

1. Heard learned counsel for the petitioner and Sri Ambrish Shukla, learned Additional Chief Standing Counsel for the State respondents.

2. The instant writ petition is preferred for the following reliefs:-

*"1) Issue a suitable, writ, order or direction in the nature of certiorari quashing the impugned order dated 10.9.2021 passed by the respondent no.2 (Annexure No.5 to the writ petition).*

*2) Issue a suitable writ, order or direction in the nature of mandamus commanding/directing the respondent no.2 to produce the impugned order dated 9.9.2021 referred in the impugned order dated 10.9.2021 and very kindly issue the writ of certiorari quashing the impugned order dated 9.9.2021 passed by the respondent no.2.*

*3) Issue a suitable writ, order or direction in the nature of mandamus commanding/directing the respondent authorities to ensure the payment of Rs.400 per 100 sacks in consonance with the prevailing law.*

*4) Issue a suitable writ, order or direction in the nature of mandamus commanding/directing the respondent authorities to vacate the Godown of the petitioner and its premises, if the authorities are not in favour to pay Rs.400 per 100 sacks like other counterparts Godown owners after paying the arrears of the dues from the due dates to the date of vacating the Godown alongwith admissible interest (in alternative prayer no.3 is made before this Hon'ble Court)."*

3. On 20.11.2023 this Court had passed the following order:-

*1. Heard Sri Pradeep Kumar Upadhyay, learned counsel for the petitioner and Sri Sharad Chandra Upadhyay, learned Standing Counsel for the respondents.*

*2. By means of this petition, the petitioner has sought following reliefs:-*

*"1) Issue a suitable, writ, order or direction in the nature of certiorari quashing the impugned order dated 10.9.2021 passed by the respondent no.2 (Annexure No.5 to the writ petition).*

*2) Issue a suitable writ, order or direction in the nature of mandamus commanding/directing the respondent no.2 to produce the impugned*

order dated 9.9.2021 referred in the impugned order dated 10.9.2021 and very kindly issue the writ of certiorari quashing the impugned order dated 9.9.2021 passed by the respondent no.2.

3) Issue a suitable writ, order or direction in the nature of mandamus commanding/directing the respondent authorities to ensure the payment of Rs.400 per 100 sacks in consonance with the prevailing law.

4) Issue a suitable writ, order or direction in the nature of mandamus commanding/directing the respondent authorities to vacate the Godown of the petitioner and its premises, if the authorities are not in favour to pay Rs.400 per 100 sacks like other counterparts Godown owners after paying the arrears of the dues from the due dates to the date of vacating the Godown alongwith admissible interest (in alternative prayer no.3 is made before this Hon'ble Court)."

3. Earlier the matter was taken up on 02.11.2023 and on the said date, we have passed detailed order, which is reproduced as under:-

"3. The petitioner claims to be owner of godown situated at Village Badalpur, Post Sewaith, Tehsil Soraon, District Prayagraj, having accommodation of 86.4 feet length x 49 feet breadth x 16 feet height. The Regional Food Controller, Prayagraj Region, Prayagraj (respondent no.4) had published an advertisement in the year 2012 for taking suitable accommodation on lease for a period of five years for storage of the essential commodities from private person. In pursuance of the said advertisement, the petitioner also applied for giving her accommodation. After completing all the formalities, the lease deed was executed between the petitioner and the respondent authority on 10.9.2012 for a period of five years from 10.03.2012 to 09.3.2017 for taking the godown in question on monthly rent @ Rs.0.70 paisa per quintal for storage capacity of 9920 bags. After expiry of the term of the lease deed, the respondents have not vacated the said godown till date.

4. Meanwhile, the Prescribed Authority/Additional District Magistrate (Civil Supplies), Prayagraj had issued a rent certificate on 18.07.2019, whereby the rent of the tenanted portion let by the petitioner-landlord to the respondent no.4 for storage capacity of 11290 quintals, has been determined @ Rs.4/- per quintal per month. The rent certificate is appended as Annexure no.4 to the writ petition (at page 54). Thereafter, the petitioner made several representations before the authorities concerned for enhancing the rent of the godown or vacate the said godown. Ultimately, the respondents had agreed to pay the monthly rent of Rs.4/- per quintal to the petitioner's godown and accordingly, an agreement had been executed between the petitioner and the respondents on 16.11.2019 for the period of five years from 07.11.2019 to 31.3.2025 on monthly rent of Rs.4/- per quintal/bag for calculated capacity 10766.94 (Rs.43,067.76 rent per month). The aforesaid agreement has been signed by the Marketing Inspector, Soraon, Prayagraj on 16.11.2019 and the District Food Controller, Prayagraj in which he had recommended the rent of the said godown @ Rs.4/- per Bora/Kuntal per month on the capacity 10766.94 (rent per month Rs.43,067.76). The agreement has been brought on record as Annexure No.4 to the writ

*petition.*

5. It is reflected from the record that one Manoj Kumar Jaiswal had given his two godowns situated at Janghai, Development Block Pratappur, Tehsil Handia, District Prayagraj on lease to the respondent no.4 and he had also entered into an agreement. When the rent was not being paid to him as per the lease deed, he made several representations before the authorities concerned. Once no action was taken then he had approached this Court by preferring Writ C No.29146 of 2021 (Manoj Kumar Jaiswal vs. State of UP and 4 others) and a Division Bench of this Court had proceeded to dispose of the writ petition on 02.12.2021 with following observations:-

*"This Court deems it appropriate to direct the petitioner to file a fresh representation before the District Magistrate, Prayagraj who shall look into the case of the petitioner and if he finds that the lease deed was executed and in fact the godown was being used by the State Authorities, then he may pass an appropriate speaking order on the representation of the petitioner after hearing the parties concerned within a period of one month from the date of filing of the representation along with a certified copy of this order."*

6. In compliance of the aforesaid order, the District Magistrate, Prayagraj vide order dated 12.1.2022 had accorded monthly rent @ Rs.4/- per quintal to Manoj Kumar Jaiswal. Similarly, the respondent no.4 vide Office Order dated 23.4.2022 had again accorded same benefit to Smt. Kapoor Devi, who is owner of godown situated at Phoolpur, District Prayagraj. Both the orders have been brought on record as Annexure No.8 to the writ petition. Again the respondent no.4 has passed Office order on 17.6.2022, wherein one Smt. Pushpa Devi, owner of godown at Holagarh, District Prayagraj, has been accorded monthly rent @ Rs.4/- per quintal and the order dated 17.6.2022 has been brought on record as Annexure No.1 to the rejoinder affidavit. By the impugned orders the respondents have denied the similar benefit to the petitioner and enhanced the monthly rent of the petitioner's godown only from Rs.0.70 paisa per quintal to Rs.0.84 paisa per quintal.

7. Learned counsel for the petitioner in this backdrop submits that the petitioner is entitled to receive the rent of the godown @ Rs.4/- per quintal in the light of the agreement dated 16.11.2019, which took place for the period from 2019 to 2025, wherein the respondents have agreed to accord the rent of the godown @ Rs.4/- per Bora/Kuntal per month on the capacity 10766.94 (rent per month Rs.43,067.76). It is also claimed that the petitioner is being discriminated as enhanced rent is being paid to other similarly situated aforesaid persons and the same is also hit by Article 14 of Constitution of India. He has vehemently submitted that in terms of the agreement of the year 2019, the entire outstanding amount qua the agreed rent of the godown must be cleared by the respondents, otherwise they may vacate the premises at the earliest. He insists that the entire liability towards the rent must be cleared by the respondents before vacating the premises in question.

8. Earlier, the matter was taken up on 19.12.2022 and the Division Bench had proceeded to pass following order:-

*"The petitioner had filed the instant writ petition with a prayer that the rent of the godown of the petitioner be paid at the rate at which it was recommended, i.e. at the rate of Rs.4/- per quintal and as the storage capacity of the godown of the petitioner was 11290 boras/quintals the rent be accordingly calculated. He further states that when the petitioner was given rent @ 84 paisa per quintal only, the instant writ petition has been filed.*

*In paragraph no.38 of the writ petition it has been categorically stated that Manoj Kumar Jaiswal was being paid rent @ Rs.4/- per quintal and it has also stated in that paragraph that the case of the petitioner was absolutely identical with the case of Manoj Kumar Jaiswal.*

*In the counter affidavit filed on behalf of respondent nos.2 to 4, The Commissioner Prayagraj Division, Prayagraj, The District Magistrate, Prayagraj and The Regional Food Controller, Prayagraj Region, Prayagraj in reply to the paragraph no.38 of the writ petition have stated that the case of the petitioner was different from the case of Manoj Kumar Jaiswal.*

*Let a supplementary counter affidavit be filed, explaining point wise as to how the case of the petitioner was different from the case of Manoj Kumar Jaiswal. The supplementary counter-affidavit be sworn by District Magistrate of Allahabad.*

*List this case on 17.01.2023 in top ten cases."*

9. In response thereof, the supplementary counter affidavit was filed on 13.01.2023 stating therein that the godown of Sri Manoj Kumar Jaiswal was taken on rent for the first time by the Food Department on the sanctioned rent @ Rs.4/- per quintal, whereas the case of the petitioner pertains to enhancement of the rent. The petitioner's godown was taken on rent by the department in the year 2012 @ 70 paisa per quintal and the same has been paid upto October, 2019. The storage capacity of the petitioner's godown is 10766.94 quintal and as per Government order dated 02.05.2018, the Competent Authority vide impugned order has given approval of 20% enhancement of the rent from 70 paisa per quintal to 84 paisa per quintal.

10. We find that initially, the respondents had taken the petitioner's godown on lease on 10.9.2012 for five years from 10.03.2012 to 09.3.2017 on monthly rent @ Rs.0.70 paisa per quintal. After expiry of the term of the lease deed, they have not vacated the said godown till date and paid the rent of the godown @ 70 paisa per quintal only upto October, 2019. Meanwhile, the Prescribed Authority has also issued the rent certificate in favour of the petitioner on 18.07.2019, whereby the rent

of the tenanted portion let by the petitioner to the respondent no.4 for storage capacity of 11290 quintals has been determined @ Rs.4/- per quintal per month. Once the respondent authorities have agreed and recommended for payment of enhanced rent @ Rs.4/- per quintal to the petitioner's godown on the calculated capacity of 10766.94 (rent per month Rs.43,067.76) and they have already executed an agreement on 16.11.2019 for the period of five years from 07.11.2019 to 31.03.2025, then later on, they cannot deviate with the terms and conditions of the agreement and such an agreement is binding on both parties. The petitioner is being discriminated vis-a-vis to other similarly situated aforesaid persons.

11. On the request of Sri Sharad Chandra Upadhyay, learned Standing Counsel, the matter is adjourned to enable him to verify the said agreement, which was executed in the year 2019 for five years from 07.11.2019 to 31.03.2025 and if it is found to be genuine, then the admitted rent from November, 2019 till date must be cleared by the department concerned, meanwhile.

12. Put up this matter for orders on 20.11.2023 on top of the list."

4. In response thereof, Shri S.C. Upadhyay, learned Standing Counsel has placed instructions dated 18.11.2023 sent by Regional Food Marketing Officer, Prayagraj Region, Prayagraj, which is taken on record. On the strength of said instructions, he submits that initially, the godown was taken on rent @ 0.70 paisa per quintal on 10.9.2012 for a period of 05 years and the rent was paid upto the year 2019. Thereafter, the new agreement was executed between the parties for the period from 07.11.2019 to 31.3.2025, which is appended as Annexure No.2 to the instruction. The Commissioner, Prayagraj Division, Prayagraj (respondent no.2) vide letter dated 12.01.2021, which is appended as Annexure no.5 to the instructions, had sought clarification from the Principal Secretary, Food and Civil Supplies, Government of U.P., Lucknow regarding enhancement of rent of the godowns, which have been taken on rent before 14.07.2015 and the response is still awaited. Finally, the respondent no.2 vide impugned order dated 09.09.2021 had increased the rent of the godown by 20% i.e. @ 0.84 paisa from 0.70 paisa.

5. On the last occasion, the matter was adjourned on the request of learned Standing Counsel for verifying the agreement dated 07.11.2009 executed between the parties for five years from 07.11.2019 to 31.03.2025. While placing the instruction dated 18.11.2023, learned Standing Counsel has admitted the said agreement but most surprisingly, he has not disclosed the rate, on which the new agreement has been executed in the year 2019. He has also not annexed the complete agreement (Form of Agreement dated 16.11.2019) along with the instruction, which has already been brought on record as Annexure No.4 to the writ petition (at page 52 of the writ petition), wherein the respondents have agreed to pay the rent of the godown at Rs.400.00 per hundred bag/Kuntal on the calculated capacity 10766.94 (rent per month Rs.43,067.76) for the period from 07.11.2019 to 31.03.2025.

6. The rent agreement is simply a contract between the landlord (owner of

*the property) and tenant for a fixed period of time, that contains the pre-discussed norms and conditions under which the tenant has temporary possession of the property, and states what the tenant will pay monthly rent. Once the agreement is signed, it governs what the landlord and the tenant can and cannot do during the term of the agreement and the agreement is binding contract between the landlord and the tenant.*

*7. The position of law is settled that the State and its authorities including instrumentalities of States have to be just, fair and reasonable in all their activities including those in the field of contracts. Even while playing the role of a landlord or a tenant, the State and its authorities remain so and cannot be heard or seen causing displeasure or discomfort to Article 14 of the Constitution of India. In the field of contracts the State and its instrumentalities ought to so design their activities as would ensure fair competition and non-discrimination. A welfare state is a form of government in which the State protects and promotes the economic and social well-being of its citizens.*

*8. In the present matter, admittedly, the new agreement was executed between the parties in the year 2019 and the respondent department continues to be a tenant but neither, the respondents have paid the rent of the godown as per new agreement to the petitioner nor they have vacated the said godown till date. In case the respondents are not willing to further retain the said godown, they shall immediately vacate the same and pay the admitted rent to the petitioner as per the agreement of the year 2019 from November, 2019 to till date.*

*9. On the request of Sri S.C. Upadhyay, learned Standing Counsel, the matter is adjourned to enable him to seek response/instruction from the Principal Secretary, Food and Civil Supplies, Government of U.P., Lucknow (respondent no.1) within ten days.*

*10. List in top ten of the cases on 06.12.2023"*

4. In response to the order dated 20.11.2023, learned ACSC has placed instructions send by the Principal Secretary State of Uttar Pradesh dated 04.12.2023, which reflects that the grievance of the petitioner has been redressed. The instructions are taken on record.

5. Learned counsel for the petitioner states that as the admissible rate has been accorded to the petitioner, the cause for filing the writ petition no more survives and the writ petition may be disposed of as infructuous.

6. Considering the facts and circumstances that the grievance of the petitioner has already been redressed, the cause for filing the writ petition no more survives and the writ petition has rendered infructuous.

7. Accordingly, the writ petition is **disposed of** as infrucuous.

**Order Date :- 6.12.2023/S.P.**