

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9091 of 1995

- =====
1. Doodhwala Brothers Pvt. Ltd., Mohalla Kacchisarai, P.S. Town and District Muzaffarpur through one of its Director, Sri Manoj Kumar Nathani
 2. Manoj Kumar Nathani, son of Sri Ram Bilas Nathani, one of the Directors of M/s Doodhwala Brothers Pvt. Ltd., resident of Kacchi Sarai, P.S. Town and District Muzaffarpur

.... Petitioners

Versus

1. The State of Bihar through the Secretary, Water Resources Department, Govt. of Bihar, Patna
2. The Executive Engineer, Western Kosi Canal Division, Sirsia Camp, Khutauna, District Madhubani at present at village Piprahi, Camp Nirmali, District Supaul
3. The Commissioner, Tirhut Division, Muzaffarpur
4. The Collector, Muzaffarpur
5. The Sub-divisional Officer cum House Controller Muzaffarpur

.... Respondents

=====

Appearance :

For the Petitioner/s : Mr. Ray Saurabh Nath, Adv.

For the Respondent/s : Mr. Kamlesh Kishore, AC to GP2

=====

CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL JUDGMENT

Date: 30-01-2015

Heard learned counsel for the parties.

2. Assailing the three impugned orders passed by the Sub-divisional Officer in capacity of the House Controller as also the appellate order of the Collector and the revisional order of the Commissioner Mr. Ray Saurabh Nath, learned counsel for the petitioners, has straightway proceeded by making a very short but yet an effective submission. According to him, the order which was passed by the House Controller was not only in ignorance of the recommendation made by the Director (Security) but also without any basis, inasmuch as the rent of five godowns of the petitioner were



fixed by the House Controller on the basis of his own impressions and by applying the principles of Rule of Thumb. He has also submitted that when the Collector of the District against such an order of the House Controller had found the order to be unsustainable he too ought to have not fixed the rate of 80 paise per sq.ft. for grant of such rent for the five godowns of the petitioner. According to him, when the petitioner carried the matter in revision against such order, the Divisional Commissioner had given the entire different dimensions by forgoing the principle of fixation of rent under the BBC Act and holding that such rent ought to have been fixed as per user or capacity of the godowns.

3. In this case a counter affidavit has been filed by the respondents wherein the entire blame has been surprisingly thrown on the petitioners for passing of the three impugned orders passed by the House Controller, Collector and the Divisional Commissioner. According to the respondents, the petitioner had led no evidence as with regard to fixation of rent and therefore, whatever order has been passed by the Collector for payment of rent of the godown of the petitioner i.e. 0.80 paise per sq.ft. is only payable.

4. In the considered opinion of this Court the dispute in view of the order of the Collector, has sought to be now confined to the rent of Rs.80 paise per sq.ft. or Rs.1.25 per Sq.ft. by way of rent of the godown is justified.

5. This Court in normal circumstances, had there been any evidence led by the parties and also discussed by the House Controller, could have gone into the nitty-gritty of such order but then on perusal of the order of the House Controller this Court is amazed because the House Controller had gone to apply the Rule of Thumb by taking into the measurement of the godown and fixing a rate. If all the godowns of the petitioner are situated in the same place i.e. Puranisarai, this Court fails to understand as to how for one godown the rate will be at least 25 paise per sq.ft. and for another it will be in the vicinity less than 20 paise. This would become very visible if the order of the House Controller is analyzed critically as would be apparent from the following table:

Sl.No.	Area	Rent
1. Godown No.1	2636.37 sq.ft.	660/-per month
2. Godown No.2	4443.8 sq.ft.	1112/- per month
3. Godown No.3	1280 sq.ft.	320/- per month
4. Godown No.4	1368 sq.ft.	350/- per month
5. Godown no.5	1001.2 sq.ft.	250/- per month

6. If all these godowns are situated in the same Mohalla Puranisarai there ought to have been some common basis for the House Controller to fix a rate whether on the basis of floor being plastered or the condition of the building but there could not have been varying rate for five of the godowns, especially when there was



no enquiry report of the Director (security). This Court must make it clear that the House Controller cannot fix the rent by the use of Rule of Thumb but has to necessarily abide by the requirement laid down under Rule 3(ii) of the Bihar Building Lease, Rent and Eviction Control Rules, 1983.

7. From a bare reading of the impugned order passed by the House Controller it is absolutely clear that none of the aforementioned safeguards or principles laid down for fixation of rent was taken into account by the House Controller and therefore, the impugned order passed by the House Controller cannot be sustained either on fact or in law.

8. The difficulty for this Court would be that had the petitioner accepted the flat rate of 80 paise per sq.ft. as awarded by the Collector in the appellate order setting aside the order of the House Controller, this Court could have closed its eyes because of the dispute being of more than 25 years old but now when such order of the Collector was assailed before the Divisional Commissioner in revision and the Divisional Commissioner has given altogether different dimensions in his revisional order, this Court will have no option but to hold that even the appellate order and the revisional order are not in accordance with the provisions of the law much less addressing to the requirement of Rule 3(ii) of the Rules.

9. The Commissioner in fact has gone on a completely tangent

angle by holding that the normal practice in fixing of the rent for warehousing was as per the storage capacity and not on the basis of floor area. This cannot be at least applied in the proceedings where the rent was to be fixed under the B.B.C. Act and its Rules. Thus, whatever was taken into account by the Commissioner also was in complete departure of the principles laid down under the B.B.C. Act and Rules.

10. In such a situation this Court would not find it possible to uphold either of the three orders passed by the Sub-divisional Officer, the Collector and the Commissioner and all of them are accordingly set aside. The matter is remitted back to the Sub-divisional Officer, Muzaffarpur who may now fix the rent of the godowns of the petitioner strictly in accordance with the provisions made under Rule 3(ii) of the Rules. This exercise must be completed by the Sub-divisional Officer, Muzaffarpur in capacity of the House Controller within a period of six months from the date of receipt of this order.

11. With the aforesaid observation and direction this writ application is disposed of.

(Mihir Kumar Jha, J)

surendra/-

U			
---	--	--	--