

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 3143 of 2015

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Kailash Prasad son of late Bodhi Prasad Yadav, resident of village- Kendua,
P.S. Sirdala, Distt- Nawada.

.... Petitioner

Versus

1. The State of Bihar.
2. District Magistrate (Collector) Nawada.
3. Subdivisional Magistrate, Rajauli, Nawada.
4. Civil Surgeon, Nawada.
5. Incharge Primary Health Officer, Health Centre cum-Chairman Patient welfare Samitee Sirdala, Nawada (Sri Anant Kumar Singh).
6. Principal Secretary, Health Department, Govt. of Bihar, Patna.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Gauri Shankar Prasad

For the Respondent/s : Mrs. Nivedita Nirvikar, GA-10

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

6. 13-10-2015 Learned counsel for the petitioner is permitted to implead the Principal Secretary, Department of Health, Govt. of Bihar, as respondent no. 6.

Heard Sri Gauri Shankar Prasad, learned counsel for the petitioner and Smt. Nivedita Nirvikar, learned Govt. Advocate – 10, who appears on behalf of all the respondents.

The petitioner, who is owner of the premises, which has been let out to respondent no. 5 under an agreement, has approached this Court invoking its writ jurisdiction under Article 226 of the Constitution of India, with a prayer to direct the respondents to pay monthly rent @ **Rs. 2,750/-** (Rupees two

thousand seven hundred fifty) from 01-08-2012 till 01-01-2015.

It is admitted position that respondent no. 5 was inducted as tenant in the premises of the petitioner since 01-08-2012, however; subsequently the agreement was executed from both the sides. In the agreement, it was indicated that rent will be paid as fixed by the House Controller-cum-SDO. After the premises was taken in possession by respondent no. 5, the respondent no. 5 approached the House Controller for fixation of fair rent, which has been fixed as Rs. 2,750/- per month. The premises consist of five rooms alongwith verandah, staircase with all other facilities.

It has been claimed by the petitioner that despite the fact that rent was fixed by the House Controller, the respondent has not paid rent, in view of fair rent fixed by the House Controller.

Learned State counsel submits that till date total amount of **Rs. 25,823/-** (twenty five thousand eight hundred twenty three) has already been paid, as rent for three years.

After the writ petition was filed, on 13-08-2015, the learned Govt. Advocate - 10 intended to file counter affidavit, which was filed, however; in counter affidavit, no statement was made as to whether against the order of the House Controller, any

appeal was preferred or not. However, at much belated stage, a supplementary counter affidavit has been filed on behalf of respondent no. 4 & 5 and it has been indicated that against the order of the House Controller, the respondents have preferred an appeal before the Collector-cum-Appellate Authority on 09-09-2015.

Learned State counsel has argued that the House Controller has incorrectly fixed the rent, which is liable to be set aside by the appellate authority, however; it has been accepted that till date, the order passed by the House Controller has not been interfered with by any authority.

In view of the fact that the premises in question is still in possession of respondent/State and the fact that fair rent was fixed by the House Controller-cum-SDO, vide Annexure – 2 to the writ petition, which has not been interfered with till date, the Court is of the opinion that the petitioner is entitled to get rent, as per the rent fixed by the House Controller. It is also evident that the House Controller had fixed the fair rent on the request made by the respondent/State itself, so it cannot be considered as an order, which was passed behind back of the respondents. Since till date, there is no interference with the order of the House Controller, the Court is of the opinion that direction can be given to respondent

no. 4 to 6 to take all steps so that in terms of the order of the House Controller, the entire arrear rent of the petitioner must be paid within a period of six weeks from the date of receipt/production of a copy of this order. It is further directed to pay regularly rent to the petitioner, in terms of the order of the House Controller, unless it is unsettled or stayed by the superior authority.

The writ petition stands allowed.

It is made clear that if the arrear of rent of the petitioner is not paid within aforesaid time, the petitioner shall be entitled to get the arrear rent with interest at the rate of 9% (nine percent) per annum, which is to be calculated from the date of claim of the rent.

It is further clarified that the respondent/State would be entitled to recover the amount of interest, if it is paid due to delay, from the pocket of the concerned employee/officer of the department responsible for delay.

With above observation & direction, the writ petition stands allowed.

(Rakesh Kumar, J.)

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