

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 19563 of 2012

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Md. Ainul Haque S/o Late Zainul Abedeen R/o Mohalla- Gewal Bigha,
Near Dayal Petrol Pump, P.S.- Civil Lines, District- Gaya

.... Petitioner

Versus

1. The State of Bihar through its Collector, Gaya
2. The Director, Mass Education, Bihar, Patna
3. The District Mass Education Officer District Mass Education Office,
Gaya

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Dharmendra Kumar Sinha

For the Respondent/s : Smt. Shalini Rawat, AC to GA - 1

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

3. 03-08-2015 Heard Sri Dharmendra Kumar Sinha, learned counsel
for the petitioner and learned A.C. to Govt. Advocate – 1.

The petitioner, who is land-lord, has approached this Court invoking its writ jurisdiction under Article 226 of the Constitution of India, with a prayer to notify/correct the order passed by the District Collector, Gaya in House Control Appeal No. 145 of 2005 to the extent that rent fixed by the House Controller be directed to be paid from the date as was directed by the House Controller, instead of date of the order by the appellate authority.

Short fact of the case is that the respondent State, particularly respondent no. 3, was inducted as a tenant of the petitioner in respect of house over Khata No. 41, Plot No. 4565



(old)/62 (new), Mohalla – Gewal Bigha, Civil Lines, Gaya at the monthly rent of Rs. 2,000/- (two thousand). Subsequently, respondent no. 3 i.e. District Mass Education Officer approached the House Controller-cum-S.D.O., Gaya under the provisions of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 (hereinafter referred to as the 'B.B.C.Act') for fixation of rent. Subsequently, the House Controller by its order dated 14-10-2004 in Rent Control Case No. 13 of 2004 fixed the monthly rent at the rate of Rs. 5,000/- (five thousand) per month. The House Controller recorded that the rent fixed by him shall be payable from 1-9-2004. Aggrieved with the order of the House Controller, the respondent no. 3 preferred an appeal, vide Rent Control Appeal No. 145 of 2005. Since on the appeal preferred by respondent no. 3, neither any decision was taken nor rent as per the order of the House Controller was paid, the petitioner approached this Court by filing a writ petition, vide C.W.J.C. No. 834 of 2010, which was disposed of on 18-03-2011 with an observation that the appellate proceeding be finally disposed of within two months.

After the order of this Court, the appellate authority i.e. the District Collector, Gaya has passed the impugned order on 18-06-2012, which is **Annexure – 6** to the writ petition. By the

said order, the appellate authority affirmed the order of the House Controller in respect of fixation of rent of the house in question to the tune of Rs. 5,000/- (five thousand) per month, however; the District Collector observed that payment of rent shall be effective from the date of order of the appellate authority i.e. order dated 18-06-2012, which has been assailed in the present proceeding.

The writ petition was filed on 12-10-2012 after serving a copy of petition on State and thereafter, on 16-10-2012, the case was directed to be listed on 23rd November, 2012 to enable respondents/State to file counter affidavit justifying the appellate order. Despite the fact that time was granted in the month of October, 2012 for filing counter affidavit, till date no counter affidavit has been filed.

Smt. Shalini Rawat, learned A.C. to G.A. – 1 informs that despite the fact that the State counsel has made communications, the respondents have not responded to the request. Accordingly, the Court decided to proceed with the case, even in absence of any counter affidavit.

Learned counsel for the petitioner submits that once the House Controller exercising jurisdiction under the provisions of B.B.C.Act had directed to pay the revised rent from the date of order passed by the House Controller, the appellate authority was

not justified to fix a different date for payment of rent, as revised by the House Controller, that too without assigning any reason.

The learned State counsel even in absence of counter affidavit has tried to justify the order passed by the District Collector.

Besides hearing learned counsel for the parties, I have also perused the materials available on record. Fact remains that the appellate authority i.e. District Collector, Gaya has approved the order of the House Controller regarding enhancement of the rent. Before the House Controller, it was not the petitioner, but the respondent no. 3 himself had approached for fixation of fare rent of house of the petitioner and on his application, the rent was fixed and House Controller made categorical direction for payment rent, as revised from 1-9-2004. Instead of complying the order of the House Controller, the respondent/State had preferred an appeal before the District Collector, Gaya without implementing the order of the House Controller. In turn, the District Collector again sat over the matter and finally after the direction of this Court in C.W.J.C. No. 834 of 2010 dated 18-03-2011, whereby direction was given to dispose of the appellate proceeding within two months, yet again much belatedly on 18-06-2012 i.e. after more than a year, the District Collector

has passed the order and without assigning any rhyme and reason has simply fixed the date for payment of rent from the date of order passed by the appellate authority. No justification has been given regarding the shifting of date for implementation of the revised rent.

In absence of any reasoning and in view of the fact that House Controller had passed the order for paying revised rent from 1-9-2004, the District Collector has virtually erred in shifting the date of payment of rent and as such, part of the order impugned is, hereby, set aside and it is declared that the petitioner is entitled to recover the rent as fixed by the House Controller i.e. 1-9-2004. The respondents, particularly; respondent no. 3 are directed to take all steps so that entire arrear of rent must be paid to the petitioner 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 get 12% (twelve percent) interest per annum, which is to be calculated from 1-9-2004.

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

(Rakesh Kumar, J.)

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