

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14530 of 2012

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Syed Jamilur Rahman son of Late Syed Shamim Rahman resident of Doomri Kothi, Exhibition Road, P.S.- Gandhi Maidan, Distt.-Patna

.... Petitioner/s

Versus

1. The Union Of India Through The Secretary Deptt. Of Post And Telecom, New Delhi

2. The Director Of Accounts (Postal) Department Of Post, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kameshwar Kumar

For the Respondent/s : Mr. Awadhesh Kumar Pandey

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 15-01-2016

Heard Sri Kameshwar Kumar, learned counsel for the petitioner and Sri Awadhesh Kumar Pandey, learned senior Central Government Counsel, who was assisted by Sri R.K. Sharma, learned Central Government Counsel appearing on behalf of both the respondents.

The petitioner invoking writ jurisdiction of this court under Article 226 of the Constitution Of India has prayed for quashing of an order dated 31.12.2012 passed by the learned Commissioner, Patna Division, in B.B.C. Revision No. 32 of 2000. By the said order the B.B.C. Revision No. 32 of 2000 was disposed of and the word “allowed” has also been used.

Short fact of the case is that the petitioner being landlord, not satisfied with the rent which was being paid by his tenant i.e.



Director of Accounts (Postal) Department Of Post, Patna, Government of India / respondent no. 2, under the provisions of Bihar Building (Lease, Rent and Eviction) Control Act 1982 (hereinafter referred to as “B.B.C. Act”) preferred an application for fixation of fair rent. It was the case of the petitioner that his premises which was situated in prime location at Patna i.e. Exhibition Road, was let out to the respondent no. 2 on the monthly rent of Rs. 2,291.25 paise. The total area of the premises was about 1833 square feet having seven rooms, two verandas and three bath rooms. The premises was let out in the year 1980 and thereafter in the year 1992 a case vide B.B.C. Case No. 128 of 1992 was filed for fixation of fair rent. In the said case the House Controller called for a report from Sub Election Officer. The report suggested that keeping in view the locality and approach, fair rent would be Rs. 3.80 paise per square feet and as such, recommendation was made to enhance the rent to Rs. 6965.40 paise. After receipt of the report and hearing the parties the learned House Controller fixed the fair rent as Rs. 6900/-. While fixing the rent the House Controller made it clear that the said fair rent would be applicable with effect from 25.8.1992, the date on which application for fixation of fair rent was filed. Against the order of the House Controller the respondent no. 2 preferred an Appeal vide B.B.C. Appeal No. 35 of 1994-95 which stood



dismissed on 14.7.1999, in view of the fact that the Appellate Authority did not consider any defect in the order of the House Controller. The respondent no. 2 thereafter preferred revision vide B.B.C. Revision Case No. 32 of 2000. Since the revision was kept pending for a long period, the petitioner thereafter approached this court by filing a writ petition vide CWJC No. 890 of 2002. In the writ petition petitioner had claimed that without passing any order on the limitation petition the revision petition was kept pending and that too no order was passed. However, the writ petition was disposed of with a direction to the Commissioner to dispose of the application within a specified time. Thereafter the learned Commissioner on 21.6.2002 passed an interim order in the revision case and as an interim measure fixed the rent as Rs. 4600/- per month with a direction to the revisionist, who is respondent no. 2 herein, to pay the rent i.e. Rs. 4600/- per month, which was to be paid with effect from 25.8.1992, the date on which application for fixation of rent was filed by the petitioner of the present case before the House Controller. It has been accepted by learned counsel for the petitioner that in compliance of the interim order passed by the Commissioner the respondent no. 2 cleared all the dues as per the monthly rent of Rs. 4600/- per month. However, during the pendency of the revision petition the respondent no. 2 vacated the premises on 1.7.2005.



Subsequently, the impugned order has been passed by the learned Commissioner and the learned Commissioner without recording any opinion on the correctness of the order either passed by the Collector or the House Controller, in a cryptic manner, has disposed of the revision application and also used the word “allowed”. He submits that in view of the provisions of the B.B.C. Act the revisional authority was though authorized to pass any order, but in any event it was minimum requirement for him to assign some reasons. He submits that on perusal of the order impugned it is evident that nothing has been indicated as to whether the learned Commissioner has approved the order of the House Controller and the Appellate Authority or he has accepted the plea of the revisionist / respondent no. 2. Only the revision case has come to an end on the plea that the premises has already been vacated.

Learned counsel for the petitioner submits that though revisional court had passed interim order, he had directed the tenant to pay a reduced rent which was less than the rent fixed by the House Controller and approved by the Appellate Authority. According to him after disposal of the revision petition without recording any finding on the correctness of the order of the House Controller or Appellate Court it will be deemed that the order of the House Controller has come into play and as such, the petitioner is entitled to

get the differential amount i.e. the rent fixed as interim measure and the rent fixed by the House Controller. In any event, he submits that the petitioner was entitled to get the difference of amount from 1992 i.e. the date of filing of the rent fixation case till the date when the premises was vacated.

Sri Pandey, submits that the premises has already been vacated and there was no relation in between the petitioner and the respondent no. 2 as landlord and tenant on the date of disposal of the revision case. The revisional court has rightly passed the order and disposed of the same. However, he was not in a position to satisfy the court as to whether the revisional order on its face is correct.

Besides hearing learned counsel for the parties I have also perused the material on record. Without going into detail of the matter the court is of the opinion that once the revision preferred by the tenant i.e. the respondent no. 2 was pending and in revision case only an interim order whereby a lesser rent amount was directed to be paid to the petitioner, at least at the time of final disposal of the revision case the revisional authority i.e. the Divisional Commissioner was required either to approve the order of the House Controller and the Appellate Order or he would have passed an order setting aside the both the orders. Had he recorded any observation regarding setting aside of both the orders there would

have been no confusion in the present matter. At this juncture it would be appropriate to quote the entire impugned order i.e. the order dated 31.12.2012 which is as follows:-

“31.12.2012 Perused the record. The OP has vacated the premises after duly paying the enhanced rent Rs. 4600/- in place of Rs. 2,291.25 paise. There is no need for further litigation. The petition is allowed with the observation the case is disposed of.”

On bare perusal of the aforesaid order it is evident that nothing has been indicated. The Commissioner has not at all indicated whether the petitioner /landlord will be entitled to get the difference of the amount or the revisional court has approved the order of both the courts below. Keeping in view the fact that the order assigns no reason certainly the order is required to interfered with. Accordingly, the order impugned i.e. the order dated 31.12.2012 passed in B.B.C. Revision No. 32 of 2000 by the revisional court is set aside. The matter is remitted back to the court of Divisional Commissioner, Patna for passing order afresh after hearing both the parties which must be passed within a period of three months from the date of receipt /production of a copy of this order.

The writ petition stands allowed.

(Rakesh Kumar, J)

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