

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7594 of 2013

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Meera, Devi Wife of Sri Purushottampur Lal Agrawal Resident of Mohalla -
Bakhri, Ward No. 14, P.S. Bakhari, District - Begusarai (Bihar)

.... Petitioner/s

Versus

1. The State Of Bihar Through The Chief Secretary, Government Of Bihar, Old Secretariat, Patna
2. The Inspector General - Cum - Secretary, Department Of Registration,
Government Of Bihar, Vikash Bhawan, New Secretariat, Bailey Road, Patna
3. The Collector - Cum - District Registrar, Begusarai, District - Begusarai (Bihar)
4. The District Sub Registrar, Begusarai, District - Begusarai (Bihar)

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar

For the Respondent/s : Mr. Devendra Kumar Sinha, AAG-2

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
ORAL JUDGMENT

Date: 26-02-2016

Heard Mr. Ashok Kumar, for the petitioner and Mr.
Devendra Kumar Sinha, A.A.G.-2 for the State.

A counter affidavit is filed on behalf of the respondents.

Indisputably, the building/premises of the petitioner was
taken on rent on 16.10.1982 by the State for running office of the
District Sub Registrar, Begusarai and was vacated on 19.03.2006.
Before letting out the building, the petitioner approached the House
Controller for fixation of fare rent. After hearing both sides, the
House Controller-cum-Sub Divisional Officer by order dated
26.08.2002 (Annexure-1) fixed the fare rent of the tenated premises

at the rate of Rs. 4,000/- per month. Dissatisfied with such fixation of fare rent, the State respondent filed an appeal before the Collector, who vide an order dated 15.11.2005 (Annexure-5), altered the fare rent from Rs. 4,000/- to Rs. 3573/- per month. The grievance of the petitioner is that even the said rent amount fixed by the competent authority at the instance of the respondent has not been paid to her.

In the counter affidavit, the respondents have stated that the District Registrar later decided to pay rent to the petitioner at the rate of only Rs. 2,000/- per month for the period the building required in occupation of the District Sub-Registrar.

Mr. Kumar Submits that the State being the welfare State cannot act arbitrarily. Citizens cannot be treated in the manner, the respondents have treated the petitioner. The respondents are obliged to pay the rent amount for the building at the rate fixed by the authority for the period they remained in occupation of the building.

Mr. Devendra Kumar Sinha, AAG-2 on the other hand submits that there is inexplicable delay in filing the writ application. He although submits that the petitioner has remedy of filing the suits for realization of the rent.

The writ petition has been filed after some delay however, the delay only in an appropriate case prohibits the Court from



exercising its jurisdiction under Article 226. The main purpose of the court under this jurisdiction is to promote justice and not to defeat justice. Reference in this regard be made to the case of ***Tukaram Kana Joshi & Others Vs. Maharashtra Industrial Development Corporation & Others***, wherein the following was observed by the Hon'ble Apex Court.

The State, especially a welfare State which is governed by the rule of law, cannot arrogate itself to a status beyond one that is provided by the Constitution. Our Constitution is an organic and flexible one. Delay and laches is adopted as a mode of discretion to decline exercise of jurisdiction to grant relief. There is another facet. The Court is required to exercise judicial discretion. The said discretion is dependent on facts and circumstances of the cases. Delay and laches is one of the facets to deny exercise of discretion. It is not an absolute impediment. There can be mitigating factors, continuity of cause action, etc. That apart, if the whole thing shocks the judicial conscience, then the Court should exercise the discretion more so, when no third-party interest is involved. Thus analysed, the petition is not hit by the doctrine of delay and laches as the same is not a constitutional limitation, the cause of action is continuous and further the situation certainly shocks judicial conscience.

The question of condonation of delay is one of discretion and has to be decided on the basis of the facts of the case at hand, as the same vary from case to case. It will depend upon what the breach of fundamental right and the remedy claimed are and when and how the delay arose. It is not that there is any period of limitation for the courts to



exercise their powers under Article 226, nor is it that there can never be a case where the courts cannot interfere in a matter, after the passage of a certain length of time. There may be a case where the demand for justice is so compelling, that the High Court would be inclined to interfere in spite of delay. Ultimately, it would be a matter within the discretion of the Court and such desecration, must be exercised fairly and justly so as to promote justice and not to defeat it. The validity of the party's defence must be tried upon principles substantially equitable. (Vide P.S. Sadasivaswamy v. State of T.N., State of M.P. V. Nandlal Jaiswal and Tridip Kumar Dingal v. State of W.B)

It is a case where the respondent State got the building on rent. The petitioner got the fare rent of the building fixed by the House Controller-cum-Sub-Divisional Officer. The State did not accept the said fare rent and filed an appeal whereafter the fare rent was reduced and fixed at Rs. 3573/- per month. Even then the respondents have not paid even the single farthing to the petitioner. Can the State be allowed to contend that although it has acted ex-facie not fairly, rather arbitrarily in dealing with the petitioner but the relief should be denied as the petitioner has remedy in filing suit. The answer, in my opinion, shall be in negative.

Taking into the facts and circumstances of the case, I am persuaded to allow the writ application by directing the respondents particularly the Collector-cum District Registrar, Begusarai to pay

the outstanding dues against the rent of the building/premises of the petitioner for the period of remained with the State i.e. 16.10.2002 to 19.03.2006 at the rate of Rs. 3573/- per month as fixed by the Collector. The amount payable shall be calculated and paid to the petitioner within five weeks from the date of receipt/production of a copy of this order failing which the petitioner shall also be entitled to simple interest at the rate of 9 per cent per annum, only on the dues from the date of this order till actual payment thereof. The State Government, in that case, shall be entitled to recover the interest component of the amount paid to the petitioner from the erring officer or officer(s) in accordance with law.

(Kishore Kumar Mandal, J)

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