

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3055 of 2013

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1. Kameshwar Singh, son of Shri Shaligram Singh
2. Girdhari Singh, son of Late Jitan Pd. Singh.
3. Sumeshwar Prasad son of Sri Gauri Shanker Prasad
4. Tej Narayan Choudhary, son of Late Hari Kishun Choudhary
5. Vijay Kumar Jaiswal, son of Late Saryug Prasad Jaiswal
Having their place of business at Principal Market Yard Buxar, P.O- Buxar,
P.S. Buxar (Town), District- Buxar.

.... Petitioners

Versus

1. The State of Bihar
2. The Agricultural Produce Market Committee (Dissolved) Buxar, through
Sub- Divisional Officer- cum- Special Officer, Buxar.
3. Sub- Divisional Officer- cum- Special Officer, Buxar.

.... Respondents

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Appearance :

For the Petitioners : Mr. Rajendra Narayan, Sr. Advocate.
Dr. Binod Bihari Sinha, Advocate.
Mr. Amarjeet Choudhary, Advocate.
For the Respondents : Mr. Anirudh Kumar Singh, AC to GP-25.

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 27-10-2016

The present writ petition has been filed for quashing the notice issued by S.D.O.-cum-Special Officer, Agricultural Produce Market Committee, Buxar (dissolved) by which the petitioners have been directed to deposit the arrears of rent within a period of one week from the date of receiving of the notice failing which the allotment of the shops would be cancelled and certificate proceeding will be initiated for recovery of the dues mentioned in the notice.

2. I.A. No. 8521 of 2013 has been filed for amendment in the relief portion of the writ petition by adding the following

prayer —

“The writ petitioners further pray for quashing the order dated 18.02.2011 passed by the Sub-Divisional Officer, Buxar and issued vide memo no. 253 dated 22.02.2011 by which the learned Sub-Divisional Officer, Buxar without any proper notice or consent of the all parties concerned and also by ignoring the terms and conditions of the lease agreement enhance the rent”.

3. Having regard to the nature of the prayer, I.A. No. 8521 of 2013 is allowed and the petitioners are permitted to make appropriate amendments in the writ petition in course of the day.

4. According to the petitioners, the short facts of the case are that they were allotted shops for carrying on wholesale business in various agricultural produce in the Principal Market Yard at Buxar in terms of deeds of lease commencing on and from 24.02.1993, providing for a monthly rent of Rs. 150/- per month. One of the salient clauses of the lease was that upon expiry of the period of the lease, the same could be renewed with the consent of both parties and upon terms agreed upon by them. The petitioners continued to run their shops in an uninterrupted manner until the year 2012 when all of a sudden, notices came to be issued by the Sub-Divisional Officer-cum-Special Officer, Buxar (respondent no.

3) demanding arrears of rent for the past almost two decades upto May 2012 variously from each of the petitioners amounting to more than one and half lacs in each case, which was required to be paid within a short span of one week from the date of receipt of the notices respectively.

5. Mr. Rajendra Narayan, learned senior counsel appearing on behalf of the petitioners, assails the notices as wholly arbitrary, submitting that the demands raised are without any basis whatsoever and *ex-facie* contrary to the terms of the lease deed. He emphasizes the specific provision in the lease deed that the shops had been allotted on a monthly rent of Rs. 150/- per month and the terms of lease could have been altered upon expiry of the lease only upon agreement between the parties. It is stated that no such renewal altering the terms of the monthly rent fixed at Rs. 150/- has been made nor any fresh agreement entered into between the parties. As such, it is submitted that the impugned action of the respondent no. 3 in demanding the arrears of rent for the past about two decades is completely arbitrary, without basis and unsustainable in law. It is further submitted on behalf of the petitioners that the earlier order dated 18.02.2011 (Annexure-2) passed by the respondent no. 3 itself discloses that the rent had admittedly been payable at the rate of Rs. 150/- per month, and

nothing has been brought on record to disclose the circumstances transpiring between 18.02.2011 when such order was passed, and May, 2012 when the impugned notices were issued, to justify the demand of arrears of rent for the past about two decades.

6. Learned counsel for the respondents opposes the writ petition and places reliance on the statements made in the counter affidavit, para-7 whereof contains a chart of the calculation of arrears said to be due from the petitioners from 01.01.1995 upto March, 2016.

7. Having heard the parties and on careful consideration of the materials on record, this Court is of the view that the impugned action of the respondent no. 3 cannot be sustained. The terms of the lease deed, particularly with regard to the rent fixed at Rs. 150/- per month, as well as with regard to renewal of the lease deed upon its expiry upon terms and conditions requiring consent of both parties, are not in dispute. The respondents have also not controverted the petitioners' stand that the terms and conditions of the lease deed with reference to the monthly rent have not been altered till date. In other words, the lease deeds originally entered into between the parties have not been modified and hence agreed monthly rent of Rs. 150/- payable thereunder by each of the petitioners continues to operate. The chart contained in para-7 of

the counter affidavit merely shows huge arrears payable by the petitioners, without however disclosing any basis for the figures and period stated therein.

8. By order dated 02.08.2016, this Court had permitted the respondents to bring on record any further materials in support of the impugned action by filing a supplementary counter affidavit, but the same has not been filed and hence it is evident that the respondents have nothing more to add. This Court is therefore of the view that in absence of any material having been brought on record to show the basis or the right to demand arrears of rent for the past about two decades from the petitioners, the action of the respondents is arbitrary and cannot be sustained.

9. The impugned order dated 18.02.2011 (Annexure-2) together with the impugned notices of demand for arrears of rent raised against the petitioners herein (Annexure-1 series) are hereby quashed and the writ petition stands allowed.

(Vikash Jain, J)

Md. Ibrarul/BT

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	29.10.2016
Transmission Date	N.A.