

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 11487 of 2014

-
1. Pinki Jaiswal Wife of Sri Mukesh Jaiswal, Resident of Village Khuskibagh, P.S. Sadar and District Purnea.
 2. Sunil Kumar Jaiswal, Son of Late Ramchandra Prasad Jaiswal, Resident of Village Imlipath, P.O. Ghulabbagh, P.S. Sadar and District Purnea.
 3. Santosh Jaiswal, Son of Sri Sita Ram Jaiswal, Resident of Village Cinema Road, Gulabbagh, P.S. Sadar and District Purnea.
 4. Sita Ram Jaiswal, Son of Late Banke Bihari Jaiswal, Resident of Village Cinema Hall Road, Gulabbagh, P.S. Sadar and District Purnea.
 5. Anil Kumar Sah Son of Late Suresh Sah, Resident of Gulabbagh, Sadar Tola, P.S. Sadar and District Purnea.
 6. Manoj Kumar Jaiswal Son of Late Subhash Chandra Jaiswal, Resident of Shashtri Nagar, Gulabbagh, P.S. Sadar and District Purnea.
 7. Anil Kumar Jaiswal, Son of Late Ramchandra Kumar Jaiswal, Resident of Imti Tola, Gulabbagh, P.S. Purnea and District Purnea.
 8. Indrajeet Kumar Barnwal Son of Sri Bishwanath Prasad Barnwal, Resident of Ram Mohini Chauk, Gulabbagh, P.S. Sadar and District Purnea.
 9. Raj Kumar Prasad Jaiswal Son of Late Goverdhan Prasad Barnwal, Resident of Ram Mohini Chauk, Gulabbagh Chouk, P.S. Sadar and District Purnea.
 10. Jyotish Bhagat Son of Late Ram Swaroop Bhagat Resident of Road Hasda, Gulabbagh, P.S. Sadar and District Purnea.
 11. Ashok Prasad, Son of Late Kailash Prasad Gupta, Resident of Khushkibagh, P.S. Sadar and District Purnea.
 12. Rakesh Kumar Gupta Son of Sirekha Prasad Gupta, Resident of Khushkibagh, P.S. Sadar and District Purnea.
 13. Mukesh Jaiswal, Son of Sri Shambhu Prasad Jaiswal, Resident of Khushkibagh, P.S. Sadar and District Purnea.
 14. Shyam Bihari Gupta Son of Late Harihar Prasad, Resident of Imli Path, Gulabbagh, P.S. Sadar, District Gaya.
 15. Dinesh Kumar Singh @ Dinesh Singh Son of Late Suraj Singh, Resident of Lohapatti, Gulabbagh, P.S. Sadar, District Purnea.
 16. Kameshwar Prasad Son of Rakhhu Singh, Resident of Shashtrinagar, Gulabbagh, P.S. Sadar and District Purnea.
 17. Raj Kumar Prasad Jaiswal, Son of Late Ayodhya Prasad Jaiswal, Resident of Bageshwari Sthan, Gulabbagh, P.S. Sadar, District Purnea.
 18. Heera Prasad, Son of Late Sukhdeo Prasad, Resident of Purani Haat, Gulabbagh, P.S. Sadar and District Purnea.
 19. Moti Prasad Son of Late Sukhdeo Prasad, Resident of Purani Hat, Gulabbagh, P.S. Sadar and District Purnea.
 20. Madan Kumar Son of Late Phulo Chaudhary, Resident of Village Purani Hat, Gulabbagh, P.S. Sadar and District Purnea.
 21. Surendra Kumar Bhagat, Son of Late Sita Ram Bhagat, Resident of Sonauli Chauk, P.S. Sadar and District Purnea.
 22. Dinesh Yadav, Son of Late Bhagwat Yadav, Resident of Village Imli Tola, P.S. Gulabbagh and District Purnea.
 23. Rabindra Kumar Sah, Son of Baldeo Prasad Sah, Resident of Chandan Nagar, Gulabbagh, P.S. Sadar and District Purnea.
 24. Sudhir Kumar Singh Son of Late Hirday Narayan Singh, Resident of Bhatta Bazar, P.S. Sadar, District Purnea.
 25. Heera Lal Verma, Son of Late Ram Prasad Verma, Resident of Gulabbagh, P.S. Sadar and District Purnea.



26. Sri Amarnath Gupta Son of Late Jamilal Gupta, Resident of Shashtri Nagar, Gulabbagh, P.S. Sadar and District Purnea.
27. Arbind Kumar Gupta, Son of Amar Nath Gupta, Resident of Shashtri Nagar, Gulabbagh, Purnea, P.S. Sadar, District Purnea.
28. Ajay Gupta, Son of Amarnath Gupta Resident of Shashtri Nagar, Gulabbagh, P.S. Sadar, District Purnea.
29. Simli Devi Wife of Sunder Lal Arya, Resident of Bazar Samitti Gulabbagh, P.S. Sadar and District Purnea.
30. Audhesh Kumar, Son of Late Shankar, Resident of Shashtri Nagar, Gulabbagh, P.S. Gulabbagh, District Purnea.
31. Vijay Kumar, Son of Late Shankar Sah, Resident of Village Shastri Nagar, P.S. Gulabbagh, District Purnea.

.... Petitioner/s

Versus

1. The State of Bihar through Agriculture Production Commissioner, Government of Bihar, New Secretariat, Patna.
2. Agricultural Produce Marketing Board (Dissolved), Gulab Bagh, Purnea, At & P.O. Gulab Bagh, P.S. Sadar, District Purnea through its Special Officer.
3. The Collector, Purnea.
4. The Sub Divisional Officer-cum-Special Officer, Agricultural Procedure Marketing Board (Dissolved), Gulab Bag, Purnea, Sadar Purnea, District Purnea.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Md. Abu Haidar,
Mr. Sanjiv Kumar and
Mr. Md. Abu Shajar, Advocates
For the State : Mr. Madhukar Mishra, A.C. to S.C. 16

=====

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 21-02-2017

Heard learned counsel for the parties.

Pursuant to order dated 13.02.2017, the respondent no. 4 is present in Court along with the entire records.

The petitioners were aggrieved by the order contained in Memo No. 267 dated 22.12.2012, issued by the respondent no. 4, by which the fair rent has been fixed at the rate of Rs. 6/- per sq. ft. from January, 2013 as against the previous rate of



Rs. 1.75/-, per sq. ft.

Learned counsel for the petitioners submitted that the said fixation of fair rent is under the Bihar Building (Lease, Rent and Eviction) Control Act, 1982 (hereinafter referred to as the 'Act') which is totally erroneous for the reason that Section 32 of the Act stipulates that the Act shall not apply to buildings owned by the Government and Trusts. He submitted that since the circular of the State Government issued under Memo No. 469/APC dated 13.09.2006, by the Agriculture Department, clearly states that after the repeal of the Bihar Agriculture Produce Market (Repealing) Act, 2006, all the land and market areas became Government property and the same were allowed to be given on rent, subject to fixing of fair rent in terms of the relevant law for which the concerned District Magistrate was directed to get the same fixed through the Building Construction Department. It was submitted that in the present case, besides the same not being complied with, even the order passed is without any notice to the petitioners and thus, unsustainable.

Learned counsel for the State, though initially tried to defend the order on the basis of the provisions of the Act, but finally he and the respondent no. 4 accepted the position that the provisions of the Act shall not apply in the present case.

The Court has also verified from the records where there is nothing to show that the petitioners were heard, either during



the enquiry by the Executive Magistrate or even by the respondent no. 4, while passing the final order. Moreover, the provisions of the Act also require that the enquiry shall be conducted by the respondent no. 4 himself, which has also not been done in the present case, as is reflected from the records and which has also been accepted by the learned State counsel and the respondent no. 4.

This being the position, and also the fact that whatever order has been passed by the respondent no. 4, the same is while exercising power under the Act and which is also not as per the procedure which was directed to be followed under the aforesaid Government circular dated 13.09.2006 and also since the entire procedure of fixing fair rent has been without any notice to the petitioners, in the considered opinion of the Court, the order impugned cannot be sustained.

Accordingly, the order fixing Rs. 6/- per sq. ft. as a fair rent as far as the area/shops of which the petitioners are tenants, is set aside. On a specific query of the Court as to whether the petitioners were ready for re-fixation in terms of the circular of the State Government dated 13.09.2006, as also that the same would relate from January, 2013, the categorical stand by learned counsel for the petitioners is in the affirmative.

In view thereof, the writ petition stands disposed off by remanding the matter to the respondent no. 3, who shall get the



fair rent fixed in terms of the aforesaid Government circular dated 13.09.2006, in accordance with law.

The petitioners shall appear before the respondent no. 3, within three weeks from today, along with a copy of this order whereafter the respondent no. 3 shall get the fair rent fixed in accordance with law and the Government Circular dated 13.09.2006. The petitioners shall also be heard. However, if they do not cooperate, the respondent no. 3 shall go ahead and fix the fair rent. The said exercise be concluded within two months from the date the petitioners appear before the respondent no. 3. If any of the writ petitioners fail to appear before the respondent no. 3 within the time stipulated above, it would be deemed that, so far as it relates to them, the writ petition stood dismissed without any interference in the order impugned.

The personal appearance of the respondent no. 4 stands dispensed with.

(Ahsanuddin Amanullah, J.)

P. Kumar

AFR/NAFR	AFR
U	

