

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.970 of 2016

=====

1. Shivanand Sah S/o Late Fakir Chand Sah, Resident of Mohalla & P.O.-
Amlatola, P.S.- Katihar, District- Katihar.

.... Defendant 1st Party-petitioner

Versus

1. Jyotish Kumar Bhagat S/o Late Amar Pd. Bhagat, Resident of Mohalla & P.O.
Amlatolla, P.S.- Katihar, Dt.- Katihar.

2. Madhukar Sharma @ Mithilesh Thakur S/o Late Ram Chandra Thakur, Resident
of Mohalla & P.O. Amlatolla, P.S. Katihar, Dt.- Katihar.

.... Defendant 2nd party-Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Anshuman Jaipuriyar

For the Respondent/s : Mr. Mahesh Narain Parwat, Sr. Advocate
Mr. Udai Chand Prasad, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 09-01-2018

1) Heard both sides.

2) The petitioner has filed this Civil Misc. Petition under Article
227 of the Constitution of India for setting aside the order dated
02.08.2016 passed in Title (Eviction) Suit No.4 of 2011.

3) The brief facts giving rise to the filing of this petition is that the
petitioner is the defendant 1st set in Title (Eviction) Suit No.4 of 2011.
Plaintiff filed the suit for eviction of the suit premises and realisation
of arrears of rent. The petitioner-respondent contested the suit
denying the relationship of landlord and tenant and further to put forth
his defence that he purchased the land from defendant No.2 on



consideration of Rs.1,75,000/- out of which the defendant 1st set paid Rs.1,30,000/- as advance to the defendant 2nd set. The agreement to sale was an oral agreement.

4) The plaintiff filed a petition under Section 15 of the Bihar Building (Least, Rent and Eviction) Control Act (hereinafter referred to as 'BBC Act') for payment of arrears of rent.

5) The petitioner-defendant 1st set filed rejoinder and stated that on 05.10.1989, he took the suit property on lease for 11 years from defendant No.2, Sri Madhukar Sharma. The land was vacant. The petitioner used the vacant land by constructing a shed as godown and contended that according to the lease deed, the suit land was vacant and the provision of BBC Act is not applicable.

6) The plaintiff stated that the defendant 2nd set, Mithilesh Thakur@ Madhukar Sharma, sold the land to plaintiff on 27.10.2008 after receiving consideration money of Rs.4,25,000/- The land was not vacant and there was a house constructed of tin. The sale deed shows that the consideration amount of land is paid. The plaintiff purchased the lands and the house constructed of tin on 1080 square feet. The learned Sub Judge-Ist has held that petitioner is to pay the rent to plaintiff as suit premises is house and no deed of agreement of sale was executed between the defendant No.1 and defendant No.2.



The defendant No.1 remains a tenant and he is liable to pay arrears of rent @ 300/- per month to the plaintiff. Being aggrieved by the aforesaid order, the petitioner-defendant filed this petition.

7) The learned counsel for the petitioner submits that from perusal of the lease deed, it would appear that the petitioner took the vacant land and thereafter the lessee, the petitioner, constructed Godown. Therefore, the vacant land cannot be defined as building under BBC Act. The learned counsel for the petitioner placed his reliance on a Division Bench Judgment of the Patna High Court reported in **1979 (27) 139 Braj Kishore Singh Vs. Commissioner of Bhagalpur**. The learned counsel for the petitioner further placed his reliance on another Division Bench decision of this Court in the case of **Ms. Ashok Chitra Pvt. Ltd. Vs. The State of Bihar 1993 (1) PLJR 524** in which it has been held that Section 2b of the BBC Act, the term 'building' has been defined as "Building" means any building or hut a part of the building or hut, let or to be let separately for residential or non-residential purpose and includes the garden, grounds and out houses, if any appurtenant to such building or hut or part of such building or hut and any furniture supplied by the landlord for use in such building or hut or part of a building or hut. A bare perusal of the definition shows that the word 'building' as defined above does not include within its ambit any vacant piece of land.' It is further



submitted that in the aforesaid case, the landlord leased out the vacant land to one Dayashanker Sharma by registered deed of lease leasing out for 25 years with an option for renewal for another 25 years. Their 1/5th share was allowed to be constructed a cinema hall and for using the same for public entertainment or such other structure as the leasee to construct industrial or commercial or residential purposes. The leasee after taking lease constructed the building and the lessor filed petition for enhancing of rent and on such facts, it was held by Division Bench of this Court that on the basis of lease of vacant land, the petition for enhancing of rent under the BBC Act is not maintainable.

8) The learned counsel for the petitioner in support of his contention further placed reliance on the judgment reported in **AIR 1966 SC 1024 Krishnapasuba Rao Kundapur Vs. Dattatraya Krishnaji Karani.**

9) On the contrary, Sri Mahesh Narain Parwat, the learned counsel for the plaintiff-respondent, submitted that admittedly the plaintiff respondent purchased the land from defendant 2nd set by virtue of sale deed dated 27.10.2008. In the sale deed itself, the full distinction of the land and the building standing thereon are mentioned and described. The plaintiff filed the eviction suit after determination of lease and due to non-payment of rent. The plaintiff filed petition



under Section 15 of the BBC Act for payment of arrears of rent. The plaintiff has very specifically given description of the suit land and the house standing thereon. Therefore, the suit under the BBC Act is maintainable. The learned counsel placed his reliance on the judgment reported in **2000 (2) PLJR 865 Shri Binay Kumar Maheshwari Vs. Fanindra Prasad Mishra** and the another judgment reported in **2007(3) PLJR 582 (Hindustan Petroleum Corporation Ltd. Vs. Rajeshwar Prasad)**. It is further submitted that Supreme Court in para 9 and 10 of **M/s. Shaw Wallace & Co. Ltd. Vs. Govindas Purushothamdas** reported in **AIR 2001 SC 1387** has held as under :-

“9. From a plain reading of the statutory provisions quoted above, it is clear that the expression “building” includes any building with the garden, grounds and outhouses appurtenant to such building, or part of such building let or to be let along with such building. In view of the expansive definition of the term, any structure which is part of the premises let out or to be let out comes within the purview of “building”. This position becomes further clear on reading sub-Section (4) of section 4 wherein it is provided that the total cost referred to in sub-Section (2) and sub-Section(3) shall consist of the market value of the site in which the building is construed, the cost of construction of the building and the cost of provision of any one or more of the amenities specified in Schedule 1 as on the date of application for fixation of fair rent. In the first proviso to the sub-Section (4), it is laid down while calculating the market value of the site in which the building is constructed, the Controller shall take into account only that portion of the site on which the building is constructed and of a portion upto fifty per cent thereof, the vacant land, if any, appurtenant to such building, the excess portion of the vacant land, being treated as amenity.



10. Reading the two provisions together, it is clear to us that for the purpose of assessment of fair rent not only the area on which the building is constructed, but also the land appurtenant to it subject to the limit prescribed in the statute and other structure appurtenant to the main building and also the amenities described in Schedule 1 of the Act are all to be taken into account. Therefore, the contention raised by Dr. Singhvi that the platform and the henpen are not to be included in calculating the area for the purpose of assessment of fair rent, since cannot be used as a building, cannot be accepted having regard to the facts found in the case. The High Court, in our considered view, did not commit any illegality in including the said structure within the plinth area for the purpose of fixation of fair rent.”

10) It is submitted that in view of the aforesaid law laid down by the Apex Court, the suit under the BBC Act is maintainable.

11) On the basis of the submissions of both sides, the sole question arises whether the provisions of the BBC Act would apply on the facts of the case? It is admitted fact that the petitioner took the lands on lease from Madhukar Sharma, the defendant 2nd set on 5.10.1989. The Clause 2 of the lease contains the covenants to pay the rent as aforesaid and constructed Godown as per his convenience and not to sublet or assign the said without the previous consent of the lessor in writing. It is further agreed that the lease would not alter the premises or to construct any permanent structure thereon after construction of the Godowns without the consent of the Lessor in writing. The lease further agreed not to use Godown or any part of thereon for any illegal or immoral purpose. According to the Clause-3 of the aforesaid lease



deed, the Lessor is to pay the land revenue in respect of the said house (Godown), to white wash the Godown every alternative years. From perusal of the aforesaid lease deed, it would appear that in the lease deed itself, it is stated that there is a Godown on the land and the revenue of the land including the Godown was to be paid by the Lessor.

12) From perusal of the sale deed executed by Lessor, Mithilesh Thakur on 27.10.2008, it appears that the land owner sold the land to the plaintiff, Jyoti Kumar Bhagat. In para 4 of the sale deed, the description of the land is mentioned which includes tin makan, tin building over 1080 square feet situated on the land measuring 1 katha 15 dhurs 5 dhurkis.

13) It appears that the plaintiff after having purchased the land from Madhukar Sharma on 27.10.2008 filed a suit for eviction of the suit premises on determination of lease and for arrears of rent. The plaintiff also filed petition under Section 15 of the BBC Act. The defendant contested the suit and also stated that he filed a suit being Title Suit No.26 of 2010 against the plaintiff and defendant 2nd set in respect of the same piece of land. The petitioner claimed that on the basis of oral deed of agreement of sale executed by defendant 2nd set, he got title. There is no relationship of landlord and tenant.



14) In the case of **Shri Binay Kumar Maheshwari Vs. Fanindra Prasad Mishra 2000 (2) PLJR 865**, the plaintiff leased out the suit land to the defendant on condition that the leasee would construct a building worth Rs.25,000/- after getting sanction from the competent authority of Municipal body. The same amount shall be deemed to be rent paid in advance by the leasee. On the aforesaid facts, it has been held that the provision of BBC Act shall be applicable.

15) In the case of **Hindustan Petroleum Corporation Ltd. Vs. Rajeshwar Prasad 2007(3) PLJR**, this Court has held that ‘the claim of the defendants-petitioners is that in the description of the suit property given in the schedule of the plaint only two kathas of land is mentioned. But from perusal of the statements made in the plaint, also from the lease agreement and the Schedule attached thereto, it becomes quite apparent that there were several constructions on the land in question which was admitted by the defendants in the said agreement and hence it is squarely covered by the definition of ‘building’ under Section 2(b) of the Act, according to which ‘building’ means any building or hut or a part of the building or hut, let or to be let separately for residential or non-residential purpose, and includes the gardens, grounds and outhouses, if any, appurtenant to such building or hut.’ This view also finds support from the



decision of the Apex Court **M/s. Shaw Wallace & Co. Ltd. Vs. Govindas Purushothamdas** reported in AIR 2001 SC 1387.

16) It may be noted in this regard that the above decision of the Apex Court is with respect to a case of Tamil Nadu Buildings (Lease, Rent & Control) Act, 1960 and Section 2(2) of that Act is exactly the same as Section 2(b) of the BBC Act. In the aforesaid case, originally the premise was a vacant land and subsequently the tenant makes construction and pays rent for the entire premises, it is held that the said premises cannot be legally called a vacant land and cannot be legally deemed to stand out of the definition of 'building' as provided in Section 2(b) of the Act. In the case of *Sri Binay Kumar Maheshwari Vs. Fanindra Prasad Mishra, reported in 2002(2) PLJR 865*, it has been held that provisions of the Act would be applicable to the facts and circumstances of the case.

17) As it has been stated above from perusal of Clause 2 sub Clause (d) and (e) the lease deed, it would appear that the lessor has agreed not to use the Godown or any part thereof for any illegal and unmoral purpose and to use the said house for godown purpose only. Sub Clause (a) and (b) of Clause 3 of the lease deed clearly stipulates that the lessor shall pay the land revenue in respect of the said house (Godown) and to white wash the Godown every alternate year. The



lease deed will be terminated in three months notice on either side.

18) It also appear from perusal of the sale deed executed by Madhukar Sharma, defendant 2nd set, in favour of the plaintiff on 27.10.2008 that on the land of Khata No.192 Khesra No.59 area of 1 katha 15 dhurs 5 dhurkis, there is building of tin house over 1080 square feet and on the facts aforesaid, I find that building existed on the suit premises and the terms of the lease deed itself shows the existence of the building on the suit premises. Therefore, I find that the provisions of the BBC Act is applicable.

19) Having considered the facts aforesaid, I do not find any merit in this Civil Misc. Petition. Accordingly, this Civil Misc. Petition is dismissed.

(Prabhat Kumar Jha, J)

Sanjeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	/03/18
Transmission Date	/03/18

