

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10095 of 2014

- =====
1. Amolakh Chand Sancheti Son of Sri Mohan Lal Sancheti, Proprietor M/s Vikash Store, D/8, Marketing Yard, Gulab Bag, Purnea, At & P.O. Gulab Bag, P.S. Sadar, District - Purnea
 2. Nirmal Chand Sancheti Son of Sri Mohan Lal Sancheti, Proprietor M/s Raja Store, D/7, Marketing Yard, Gulab Bag, Purnea, At & P.O. Gulab Bag, P.S. Sadar, District - Purnea
 3. Bajrang Lal Sancheti Son of Sri Mohan Lal Sancheti, Proprietor M/s Ritesh Store, C/14, Marketing Yard, Gulab Bag, Purnea, At & P.O. Gulab Bag, P.S. Sadar, District - Purnea
 4. Raj Kumar Goyal Son of Sri Raghubir Prasad Agrawal, Proprietor Hariyana Trading Company, F/1, Marketing Yard, Gulab Bag, Purnea, At & P.O. Gulab Bag, P.S. Sadar, District - Purnea
 5. Vijay Kumar Jain Son of Late Manikchand Baid, Proprietor M/s Rajesh Store, C/9, Marketing Yard, Gulab Bag, Purnea, At & P.O. Gulab Bag, P.S. Sadar, District - Purnea
 6. Sumit Kumar Baid Son of Sri Vijay Kumar Jain, Proprietor M/s Nilesh Store, C/10, Marketing Yard, Gulab Bag, Purnea, At & P.O. Gulab Bag, P.S. Sadar, District - Purnea
 7. Mahabir Prasad Pareekh Son of Late Mohan Lal Pareekh, Proprietor M/s Shree Durga Store, C/6, Marketing Yard, Gulab Bag, Purnea, At & P.O. Gulab Bag, P.S. Sadar, District - Purnea
 8. Babulal Agrawal Son of Late Ram Bhagat Agrawal, Proprietor M/s Sumit Treeding Company, C/3, Marketing Yard, Gulab Bag, Purnea, At & P.O. Gulab Bag, P.S. Sadar, District - Purnea
 9. Bajrang Lal Agrawal Son of Sri Ram Chandra Agrawal, Proprietor M/s Manoj Store, A/4, Marketing Yard, Gulab Bag, Purnea, At & P.O. Gulab Bag, P.S. Sadar, District - Purnea
 10. Bhagwati Devi Wife of Sri Roshan Lal Goyal, Proprietor M/s Raj Store, B/29, Marketing Yard, Gulab Bag, Purnea, At & P.O. Gulab Bag, P.S. Sadar, District - Purnea
 11. Binod Kumar Golchcha Son of Late Bachcharaj Golchcha, Proprietor M/s Umed Bhandar, B/43, Marketing Yard, Gulab Bag, Purnea, At & P.O. Gulab Bag, P.S. Sadar, District - Purnea
 12. Umesh Prasad Jaiswal Son of Late Rajendra Prasad Jaysawal, Proprietor M/s Umesh Prasad Jaisawal, K/2 Borapatti, Marketing Yard, Gulab Bag, Purnea, At & P.O. Gulab Bag, P.S. Sadar, District - Purnea
 13. Sanjay Kumar Son of Late Jogendra Prasad Saha, Proprietor M/s Shubham Store, D/11, Marketing Yard, Gulab Bag, Purnea, At & P.O. Gulab Bag, P.S. Sadar, District - Purnea

... .. Petitioners

Versus

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



4. The Sub - Divisional Officer - cum - Special Officer,
Agriculture Produce Marketing Board (Dissolved), Gulab Bag,
Purnea, Sadar Purnea, District - Purnea

... .. Respondents

=====

with

Civil Writ Jurisdiction Case No. 9920 of 2014

=====

1. Khagesh Kumar Son of Late Naresh Kumar Bishwas Proprietor
M/s Khagesh Store, SS/35, Marketing Yard, Gulab Bag, Purnea,
At & P.O. Gulab Bag, P.S :- Sadar, District - Purnea.
2. Nirmal Jain Son of Late Monti Lal Jain Proprietor M/s Vinayak
Bandhu, C/11, Marketing Yard, Gulab Bag, Purnea, At & P.O. : -
Gulab Bag, P.S. : - Sadar, District - Purnea.
3. Umed Kumar Golchha Son of Late Bachhraj Golchha
Proprietor M/s Chhatar Bhandar, C/15, Marketing Yard Gulab
Bag, Purnea, At & P.O. Gulab Bag, P.S. Sadar District - Purnea.
4. Chhatar Kumar Golchha Son of Late Bachhraj Golchha
Proprietor M/s Chhatar Kumar Golchha, Shop no. 19,
Marketing Yard, Gulab Bag, Purnea, At & P.O. : - Gulab Bag, P.S.
- Sadar, District - Purnea.
5. Praveen Kumar Agrawal Son of Puran Chand Agrawal
Proprietor M/s Praveen Kumar Agrawal, NSS/06, Marketing
Yard, Gulab Bag, Purnea, At & P.O. : - Gulab Bag, P.S. : - Sadar,
District - Purnea.
6. Birendra Jayaswal Son of Late Shiv Narayan Jayaswal
Proprietor M/s Manish Kumar Rohan Kumar, Shop no. 1/08,
Marketing Yard, Gulab Bag, Purnea, At & P.O. :- Gulab Bag, P.S.
: - Sadar, District - Purnea.
7. Rajendra Prasad Agrawal Son of Late Jay Narayan Agrawal
Proprietor M/s Sarita Store, SS/37, Marketing Yard, Gulab
Bag, Purnea, At & P.O. : - Gulab Bag, P.S.- Sadar, District -
Purnea.
8. Lalit Kumar Agrawal Son of Puran Chand Agrawal Proprietor
M/s Lalit Store, C/08, Marketing Yard, Gulab Bag, Purnea, At
& P.O.- Gulab Bag, P.S. - Sadar, District - Purnea.
9. Madan Lal Agrawal Son of Late Nand Lal Agrawal Proprietor
M/s Nirmal Store, C/12, Marketing Yard, Gulab Bag, Purnea,
At & P.O. :- Gulab Bag, P.S. : - Sadar, District - Purnea.
10. Vinod Kumar Agrawal Son of Late Visheshwar Lal Agrawal
Proprietor M/s Vinod Kumar Agrawal, C/13, Marketing Yard,
Gulab Bag, Purnea, At & P.O. : - Gulab Bag, P.S. - Sadar, District
- Purnea.
11. Yugal Kishor Agrawal Son of Sri Rajendra Prasad Agrawal
Proprietor M/s Yugal Kishor Agrawal, Godown no. 1(K),
Marketing Yard, Gulab Bag, Purnea, At & P.O. :- Gulab Bag,
P.S. : - Sadar, District - Purnea.
12. Kamal Kumar Agrawal Son of Late Shivdhan Agrawal
Proprietor M/s Kamal Kumar Agrawal, SSF/04, Marketing
Yard, Gulab Bag, Purnea, At & P.O. : - Gulab Bag, P.S. - Sadar,
District - Purnea.



... .. Petitioners

Versus

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

=====

Appearance :

(In Civil Writ Jurisdiction Case No. 10095 of 2014)

For the Petitioners : Mr. M.N. Parbat, Sr. Advocate.

Mr. Sanjay Kumar Jha

Mr. Bhanu Prakash, Advocates.

For the Respondents: Mr. Akhilesh Kumar Sinha, AC to SC-19

(In Civil Writ Jurisdiction Case No. 9920 of 2014)

For the Petitioners : Mr. M.N. Parbat, Sr. Advocate.

For the Respondents: Mr. Manish Kumar, AC to AAG-6

=====

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date : 26-11-2018

Heard learned counsel for the petitioners and learned counsel for the respondents.

2. Both these writ petitions have been filed with common prayer for the following reliefs -

“(a) To issue a writ of Certiorari for quashing the order as contained in memo no. 267 dated 22.12.2012 (Annexure-2), issued by Sub-divisional Officer-cum-Special Officer, Agricultural Produce Marketing Board (Dissolved), Gulab Bag, Purnea through which the petitioners have been asked to deposit alleged fair rent of premises in question at the exorbitant rate of Rs. 6/- per sq. ft. since January 2013 in place of Rs. 1.75/- per sq. ft. as paid by them earlier and also to get their agreements modified accordingly.

(b) To issue a further writ of Certiorari for quashing the order, if any, (after calling it from the possession of respondents), through which alleged fair rent of premises in question of Agricultural Produce Marketing Board (Dissolved), Gulab bag,



Purnea has been fixed by the respondent authorities, at the exorbitant rate of Rs. 6/- per sq. ft. in place of Rs. 1.75 per sq. ft. since January 2013, in illegal and arbitrary manner and in complete violation of principle of natural justice.

(c) To issue a further writ of Certiorari for quashing the notices (Annexure-4 series) issued by Sub-divisional Officer-cum-Special Officer, Agricultural Produce Marketing Board (Dissolved), Gulab Bag, Purnea, through which the petitioners have been asked to deposit alleged dues amounts of fair rent of their respective premises at the enhanced rate with retrospective effect of January 2013 within a period of 15 days, with threatening that failing which legal proceedings will be initiated against the petitioners for realization of said dues amounts.

(d) To issue a writ of Mandamus commanding the respondents not to realize alleged fair rent of premises in question of petitioners situated within the compound of Agricultural Produce Marketing Board (Dissolved), Gulab Bag, Purnea at the rate of Rs. 6/- per sq. ft. in place of Rs. 1.75/- per sq. ft., since January 2013 on the basis of alleged fixation of fair rent, which has been done dehors the rules, in illegal and arbitrary manner.

(e) To any other relief or reliefs for which the petitioners may be found entitled to."

3. Mr. M.N. Parbat, learned Senior counsel appearing on behalf of the petitioners makes a short submission to challenge the validity of the impugned order dated 22.12.2012 on grounds of violation of natural justice. He invites reference to the provision of Rule 3(1)(iv) of the Bihar Buildings (Lease, Rent and Eviction) Control Rules, 1983 which specifically contemplates grant of opportunity of hearing to the parties before fixation of fair rent. It is submitted that in the instant case no such opportunity has been



granted and hence the impugned order is wholly arbitrary and unsustainable in law.

4. Learned counsel for the respondents, on the other hand, submits that pursuant to the order dated 21.02.2017 passed by this Court in C.W.J.C. No. 11487 of 2014 (*Pinki Jaiswal and Ors. Vs. The State of Bihar and Ors.*) relating to 31 similarly situated persons, the Senior Dy. Collector, by his order dated 25.09.2018, has fixed the fair rent of nearby premises at Rs. 6 per sq. ft. after grant of opportunity of hearing to those persons. It is submitted that in this view of the matter, the petitioners ought to be directed to make payment of the fair rent as fixed in the case of similarly situated persons.

5. Having heard the parties and on consideration of the materials on record, this Court finds merit in the writ petition. The specific stand of the petitioners is that they have not been granted an opportunity of hearing before fixation of fair rent relating to their respective premises. It transpires from the order dated 21.02.2017 passed by this Court in C.W.J.C. No. 11487 of 2014 referred to above that those persons were agreeable for re-fixation of fair rent in their cases on the basis of the circular of the State Government dated 13.09.2006. Learned counsel for the respondents has not been able to clarify how the Sr. Dy. Collector came to pass the order dated 25.09.2018 fixing the fair rent at Rs. 6/- per sq. ft., even after having noticed that the circular of the



State Government dated 13.09.2006 contemplates that the District Magistrate would have power to get the fair rent assessed through the Building Construction Department. Be that as it may, if the petitioners have not been granted an opportunity before re-fixation of the fair rent, which fact has not been disputed by the respondents, it must be held that the impugned order dated 22.12.2012 (Annexure-2) has been passed in violation of Rule 3(1) (iv) of the Bihar Buildings (Lease, Rent and Eviction) Control Rules, 1983 aforesaid and cannot be sustained.

6. The impugned order dated 22.12.2012 (Annexure-2) is accordingly set aside and the matter remanded to the Sub-Divisional Officer-cum-Special Officer, Agricultural Produce Marketing Board (Dissolved), Gulab Bag, Purnea (respondent no. 4) who shall issue notice to all the petitioners and grant a reasonable opportunity of being heard before proceeding further in the matter in accordance with law. It shall be open to the petitioners also to raise objection to the jurisdiction of the Sub-Divisional Officer in the light of the circular dated 13.09.2006, if so advised.

7. The writ petitions stand allowed.

Ibrar/BT

(Vikash Jain, J)

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	29.11.2018
Transmission Date	N.A.

