

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10955 of 2017

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Kumar Mahendra Pratap Singh, Son of Late Chandradeep Singh, resident of
Village- Suara, Post Office- Pahleja, Police Station- Dehri, District- Rohtas.

... .. Petitioner/s

Versus

1. Bihar State Food & Civil Supplies Corporation Ltd. through its Managing Director, Vth Floor, Sone Bhawan, Bir Chand Patel Path, Patna- 800001.
2. The Deputy Chief Storage (B.S.F.C), (Headquarter), Vth Floor, Sone Bhawan, Bir Chand Patel Path, Patna- 1.
3. The District Manager, B.S.F.C. & Corporation Ltd. Rohtas at Sasaram.
4. The Incharge, Paddy Purchase Centre, Dehri Sub Division, (B.S.F.C.) Police Station- Dehri, District- Rohtas.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Binod Bihari Singh, Advocate
For the Respondent/s : Dr. Kislay, Advocate.

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 15-05-2019

Heard Mr. Binod Bihari Singh, learned counsel for the petitioner and Dr. Kislay, learned counsel for the Bihar State Food and Civil Supplies Corporation Limited (hereinafter referred to as the 'Corporation').

The present writ application has been filed for setting aside the communication made vide Letter No. 2801, dated 10.03.2015, as contained in Annexure-5, issued under the signature of Respondent No.2, the Deputy Chief Storage, B.S.F.C.(Headquarter), whereby, the monthly rent of the leased out godown of the petitioner has been fixed @ Rs.2/- per square feet for the period from 15.02.2014 to 30.06.2014 and Rs.2.5/-



per sq. feet after 01.07.2014. Further prayer has been made for a direction to the respondent authorities for payment of monthly rent for leased out Godown of the petitioner @ Rs.7/- per square feet in terms of the order dated 10.02.2015 passed in Rent Fixation Case No.372M of 2014 by the Rent Controller, Dehri, as contained in Annexure-3. The relief stipulated in paragraph 1 of the writ application reads as follows:

“1. That the petitioner prays interalia, for the following relief/reliefs:-

(i) To issue an order/orders to set aside the order communicated vide Letter No.2801 dated 10.3.2015 passed/issued by Respondent No.2, so far it relates to petitioner only, by which the leased out petitioner's Godown rent has been fixed at the rate of Rs.2/-per sq. feet for the period from 15.02.2014 to 30.06.2014 and Rs.2.5/- per sq. feet after 1.7.2014 (Annexure-5) and consequential thereof, direction may be issued to Respondents to pay the rent for leased out Godown of petitioner at the rate fo Rs.7/- per sq. feet in terms of an order of Rent Controller, Dehri dated 10.2.2015 in Rent Fixation Case No.372M of 2014 (Annexure-3).

(ii) To issue an order/direction for which the petitioner is entitled to.”

The factual matrix of the case is that a constructed godown on the petitioner's piece of land measuring an area of 8550 sq.ft. appertaining to Plot No. 1305, Khata No. 164



situated at Mauza Suara in the district of Rohtas was handed over to the Corporation on lease on 15.2.2014 for temporary storage of paddy/CMR. Consequently, an agreement dated 5.5.2014 as contained in Annexure 1, was executed between the petitioner Kumar Mahendra Pratap Singh and the Respondent No. 3, the District Manager, BSFC, Rohtas at Sasaram to the effect that the rent of the petitioner's godown will be fixed by the Rent Controller and paid by the office of the Respondent No. 3. Subsequently, Respondent No. 3, the District Manager, BSFC, Rohtas at Sasaram, vide letter no. 1070 dated 31.5.2014, as contained in Annexure 2 requested the Sub-divisional Officer, Dehri to fix the rent of the petitioner's godown since an agreement has been executed with a condition that the rent of the godown will be paid as fixed by the Rent Controller under the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 (hereinafter referred to as the Rent Control Act). Consequently, the Sub-divisional Officer-cum-competent authority, Dehri vide order dated 10.2.2015 passed in Rent Fixation Case No. 372M of 2014, as contained in Annexure 3, fixed the rate of rent @ Rs.7/- per sq.ft. and calculated the rent of the petitioner's godown to the tune of Rs.19,950/- per month. The order as contained in Annexure 3, reflects that the



Respondent No. 3, the District Manager, BSFC, Rohtas at Sasaram was directed to submit the departmental instruction in the matter but the same was not filed. Hence, it was presumed by the Court that the Respondent No. 3, the District Manager, BSFC, Rohtas at Sasaram has nothing to say though it appears that the Circle Officer, Dehri vide letter no. 12 dated 6.1.2015 recommended the fair rent at the rate of Rs.9/- per sq.ft. The order of the Rent Controller dated 10.2.2015 as contained in Annexure 3 has never been challenged by the competent authority, hence the order has become final. The petitioner's godown was vacated in October, 2016 and possession thereof was given to the petitioner but no arrears of rent was paid to him.

During the pendency of the Rent Fixation Case No. 372M of 2014 before the Rent Controller, Respondent No. 3, the District Manager, BSFC, Rohtas at Sasaram wrote letter no. 2073 dated 18.11.2014, as contained in Annexure 4, to the Respondent no. 2, the Deputy Chief Storage, BSFC (Headquarter) with a request to fix the rent of the petitioner's godown without disclosing the fact that a House Rent Fixation Case No. 372M of 2014 was also initiated at the request made by Respondent No. 3 before the Rent Controller for fixation of fair rent as per the conditions stipulated in the agreement.



Consequently, Respondent no. 2, the Deputy Chief Storage, BSFC, (Headquarter) vide letter no. 2801 dated 10.3.2015 as contained in Annexure 5, intimated about the approval of the rate of rent with regard to 26 lessees including the petitioner wherein the petitioner's name figures at Sl. No.1, whereby the rent of the godown of the petitioner was fixed at the rate of Rs.2/- per sq.ft. for the period from 15.2.2014 to 30.6.2014 and Rs.2.5/- per sq.ft. after 1.7.2014. The said fixation was made a month after passing of the order by the Rent Controller dated 10.2.2015, that too without giving any opportunity of hearing to the petitioner. However, the Respondent No. 3, the District Manager, BSFC, Rohtas at Sasaram gave the responsibility to utilize the godowns in question to its full extent and to provide the bank account number along with IFSC Code of the respective godown owners. Subsequently, the Respondent No. 3, the District Manager, BSFC, Rohtas at Sasaram vide letter no. 647 dated 5.5.2015 intimated the Respondent No. 2, the Deputy Chief Storage, BSFC (Headquarter) that vide letter no. 2801 dated 10.3.2015 the rent of the petitioner's godown was fixed at the rate of Rs.2/- and Rs.2.5/- but the Sub Divisional Officer-cum-competent authority, Dehri has fixed the rent of the petitioner's godown in Rent Control Case No. 372M



of 2014 at the rate of Rs.9/- per sq.ft. (though the rate has wrongly been mentioned, it was fixed at the rate of Rs.7/- per sq.ft.). The petitioner being the owner of the godown claims the rent as per fixation made by the Rent Controller. Similar intimation was also made by Respondent No. 3, the District Manager, BSFC, Rohtas at Sasaram to the Respondent No. 2, the Deputy Chief Storage, BSFC (Headquarter) vide letter no. 1434 dated 30.9.2015, as contained in Annexure 7, but since payment of rent was not made to the petitioner, the petitioner submitted a representation dated 9.1.2017, as contained in Annexure 8 before the Respondent No. 3, the District Manager, BSFC, Rohtas at Sasaram with detailed calculation to the effect that the rent of the petitioner's godown for the period from 15.2.2014 to 14.12.2014 comes to Rs.1,98,835/-, for the period from 15.12.2014 to 4.12.2015 comes to Rs.2,32,085/- and for the period from 5.12.2015 to 31.10.2016 comes to Rs.2,16,790/-, the total amount being Rs.6,47,710/-. The said calculation was made at the rate of Rs.7/- per sq.ft. as per fixation made by the Rent Controller but inspite of that, the same has not been paid.

It is submitted by learned counsel for the petitioner that the rent agreement entered into between the petitioner and



the Respondent No. 3, the District Manager, BSFC, Rohtas at Sasaram clearly reflects that the rent was to be paid as per fixation made by the Rent Controller under the provision of the Rent Control Act. The rent of the petitioner's godown was fixed under Section 5 of the Rent Control Act on the request of Respondent No. 3, the District Manager, BSFC, Rohtas at Sasaram, but during the proceeding, necessary instructions were not supplied, hence after taking a ground report from the Circle Officer who recommended for the rent of petitioner's godown to be fixed at the rate of Rs.9/- per sq.ft., fixed the rent of the petitioner's godown at the rate of Rs.7/- per sq.ft.

It is admitted case of the petitioner that the said order has not been challenged and maliciously, during pendency of the Rent Fixation Case, request was made by Respondent No. 3, the District Manager, BSFC, Rohtas at Sasaram to the Respondent No. 2, the Deputy Chief Storage, BSFC (Headquarter) for fixation of the rent without intimating that the rent fixation case is pending, though subsequently vide letters dated 5.5.2015 and 30.9.2015, as contained in Annexures 6 and 7, the same was intimated by Respondent No. 3, the District Manager, BSFC, Rohtas at Sasaram to the Respondent No. 2, the Deputy Chief Storage, BSFC (Headquarter), but the Respondent No. 2, the



Deputy Chief Storage, BSFC (Headquarter) failed to respond to the said request.

Learned counsel for the petitioner further submits that the action of the respondent authorities is hit by the principles of promissory estoppel as the condition was stipulated in the agreement to make payment of the rent as per fixation made by the Rent Controller and it was fixed by the Rent Controller on the request of Respondent No. 3, the District Manager, BSFC, Rohtas at Sasaram. Moreover, an order passed in exercise of quasi-judicial jurisdiction by the Rent Controller cannot be overridden by an executive order issued by the Respondent no. 2, the Deputy Chief Storage, BSFC (Headquarter), as contained in Annexure 5. The order as contained in Annexure 5 has been passed by the Respondent No. 2, the Deputy Chief Storage, BSFC (Headquarter) without giving an opportunity of hearing to the petitioner, hence the same is in clear violation of the principles of natural justice. The period of tenancy from 15.2.2014 to 31.10.2016 is not in dispute. Hence, the petitioner is entitled for the payment of rent which comes to Rs.6,47,710/-, the details of which has been given by the petitioner in his representation, as contained in Annexure 8 to the writ application.



Learned counsel for the Corporation, relying upon the counter affidavit, submits that the Respondent No. 2, the Deputy Chief, Storage (BSFC), Headquarter, has fixed the rent of petitioner's godown @ Rs.2/- per sq.ft. for the period from 15.2.2014 to 30.6.2014 and @ Rs.2.5 per sq.ft. after 1.7.2014. However, learned counsel is not in a position to deny the fact that as per agreement (Annexure 1), the rent was fixed under the Rent Control Act and the Sub Divisional Officer-cum-Rent Controller, Dehri on the request of the Respondent No. 3, the District Manager, BSFC, Rohtas at Sasaram, after calling for a report from the Circle Officer, Dehri, passed order dated 10.2.2015, as contained in Annexure 3 fixing the rent of petitioner's godown @ Rs.7/- per sq.ft. and the same has not been challenged. It is further submitted by learned counsel for the Corporation that if the payment of rent of the godown of the petitioner has not been made till date, it will be made within a reasonable time frame.

Considering the rival submissions of the parties, the period of tenancy, i.e. from 15.2.2014 to 31.10.2016 and the area of tenancy to the extent of 2850 sq.ft. are admitted. This is also not in dispute that as per the agreement contained in Annexure 1, the rent was to be fixed as per the provision of the



Rent Control Act. The Rent Controller vide order dated 10.2.2015 passed in House Rent Fixation Case No. 372M of 2014, as contained in Annexure 3 fixed the fair rent on the request made by Respondent No. 3, the District Manager, BSFC, Rohtas at Sasaram and the same has not been challenged. The period of lease was extended vide letter no. 1392 dated 12.9.2017, as contained in Annexure C to the counter affidavit but the godown in question was vacated in October, 2016. These facts have been admitted in the counter affidavit on behalf of the respondents. Paragraph 6 of the counter affidavit reads as follows:

“6. That the Sub-Divisional Officer-cum-Rent Controller, Dehri was pleased to determine the rent of godown of petitioner at the rate of Rs.7 per sq. feet for 2850 sq. feet after hearing the petitioner on 10.02.2015 [Anx.-3 of the main writ application] on the basis of a report furnished by Circle Officer, Dehri in House Rent Case No.372M of 2014. And the said order has never been challenged before Appellate or Revisional Authority under the act and hence the order became final.”

Thus, it is apt and clear that the fixation of the rent, as was determined by the Sub-Divisional Officer-cum-Competent



Authority, Dehri, has never been disputed by the respondent authorities concerned, nor has been faulted with in any manner whatever. Neither the procedure in which the rent has been determined, nor the jurisdiction of the Sub-Divisional Officer-cum-Competent Authority, Dehri has been challenged or questioned by the respondent authorities concerned.

Furthermore, the Agreement dated 5.5.2014 (as is contained in Annexure-1), which has been entered into between the petitioner and the District Manager, State Food Corporation, Rohtas at Sasaram, i.e., the Respondent No. 3 is also not disputed in any manner whatsoever by the respondent authorities and it was on the basis of such agreement that Letter No. 1070 dated 31.5.2014 came to be issued by the Respondent No.3 and pursuant thereto the Sub-Divisional Officer-cum-Competent Authority, Dehri determined the rent of the godown of the petitioner. Hence, the Agreement dated 5.5.2014 and the order dated 10.2.2015 passed by the Sub-Divisional Officer-cum-Competent Authority, Dehri, in considered opinion of this Court, has attained finality.

Furthermore, what this Court finds is that the order under challenge in this writ application, i.e., the Letter No.2801 dated 10.3.2015, as is contained in Annexure – 5, does not even



whisper about the Agreement dated 5.5.2014 and the order dated 10.2.2015 passed by the Sub-Divisional Officer-cum-Competent Authority, Dehri. What culls out is that although so far as the very basis of the leasing out of the godown of the petitioner, i.e., the Agreement dated 5.5.2014, is concerned, it is acceptable to the respondent authorities, but so far as the recital of the Agreement dated 5.5.2014 is concerned, where it is agreed to the effect that monthly rent of the godown of the petitioner would be adjudicated/determined by the Sub-Divisional Officer under the Rent Control Act, it has surprisingly not been given any consideration in the impugned order, which cannot be justified in any manner and is fit to be set aside on this score alone.

Respondents have raised a dispute that the rent of petitioner's godown was fixed at the rate of Rs.2/- per sq.ft. and Rs.2.5/- pr sq.ft. by the Respondent No. 2, the Deputy Chief Storage, BSFC (Headquarter) vide order dated 10.3.2015, but the petitioner is demanding rent at the rate of Rs.7/- per sq.ft. as per fixation made by the Rent Controller, which is not authorized by the Corporation and the Corporation has been requested by Respondent No. 3, the District Manager, BSFC, Rohtas at Sasaram vide letter no. 647 dated 5.5.2015, as



contained in Annexure E to the counter affidavit for fixation of rent of the petitioner's godown, which is still awaited.

However, there is no in dispute that the agreement was executed for payment of rent as per fixation made by the Rent Controller under the provisions of the Rent Control Act and the rent was fixed in pursuance to the request made by Respondent No. 3, the District Manager, BSFC, Rohtas at Sasaram. Hence, it is not in dispute that Respondent No. 3, the District Manager, BSFC, Rohtas at Sasaram promised to make payment of rent and subsequently, the Respondent No. 2, the Deputy Chief Storage, BSFC (Headquarter) re-fixed the rent. It is well settled that the principle of promissory estoppel applies even to the Government or the public bodies except with certain exceptions. When the Government agency or the public body is able to show that in view of the facts which have transpired since the making of the promise, public interest would be prejudiced if the Government were required to carry out the promise, in that circumstance, the Court would have to balance the public interest in the Government carrying out a promise made to a citizen which has induced the citizen to act upon it and alter his position and the public interest is likely to suffer if the promise were required to be carried out by the Government and



determine which way the equity will lie as has been held in the case of M/s Motilal Padampat Sugar Mills Co. Ltd. Vs. The State of U.P. and Ors., A.I.R. 1979 SC 621.

The Apex Court, in the aforesaid case was dealing with the concession made by the State of U.P., giving exemption from the sales tax for a period of three years under Section 4A of the U.P. Sales Tax Act to all new industrial units in the State with a view to enable them to come on firm footing in developing stage, and in pursuance to the said promises, the petitioner of the said case, established Hydrogenation Plant for manufacture of Vanaspati and it was confirmed by the authorities that there will be no sales tax for three years on the finished product from the date it gets power connection for commencing production and that came to be challenged before the Apex Court. In the said case it has been held that the promissory estoppel applies even to the Government and to the public bodies. Relevant portion of paragraph 24 of the judgment reads as follows:

“..... The law may, therefore, now be taken to be settled as a result of this decision that where the Government makes a promise knowing or intending that it would be acted on by the promises and, in fact, the promisee, acting in reliance on it, alters his position, the



Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promises, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution. It is elementary that in a Republic governed by the rule of law, no one, howsoever high or low, is above the law. Every one is subject to the law as fully and completely as any other and the Government is no exception. It is indeed the pride of constitutional democracy and rule of law that the Government stands on the same footing as a private individual so far as the obligation of the law is concerned: the former is equally bound as the latter.....”

Similar view has been reiterated by the Supreme Court in the case of Manuelsons Hotels Private Limited Vs. State of Kerala and Ors., (2016) 6 Supreme Court Cases 766 where it has been held that the promissory estoppel applies to the Government, public or executive powers but it must yield to overriding public interest.

In the present case, there is no issue with regard to the public interest. The Corporation and its officers are not only bound by the promises they made in the agreement, they cannot



escape a quasi judicial order passed by the Rent Controller deciding the fair rent under Section 5 of the Rent Control Act though penalty is prescribed under Section 28 of the said Act if one fails to comply the directions made under the Act and the order has become final as the same has not been challenged.

The other issue involved in the case is whether an executive order passed by Respondent no. 2, the Deputy Chief Storage, BSFC (Headquarter) can override a legally valid quasi judicial order passed by the Rent Controller which has all trappings of a Court.

Furthermore, Section 23 of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982, reads as follows:

“23. Execution of Orders of Controller and Commissioner:- Every Order of the Controller passed under this Act, where no appeal against such order has been preferred under Section 24, every order of the appellate authority on appeal under Section 24 and every order of the Commissioner passed in revision under Section 26 shall be executed by the Court as if such orders were a decree passed by such Court.”

Thus, it is loud and clear that the legislature has also considered the Controller to be a Court within the Act.

Lastly, the Respondent authorities always had the



remedy to appeal, if at all they were aggrieved by the determination of Rent by the Controller under the Act, which has been provided under Section 24 of the Act and the remedy of revision before the Commissioner under Section 26 of the Act, but rather than doing so, the respondent authorities concerned have acted arbitrarily and have passed the impugned order in the most blatant and illegal manner, which is not only perverse to the core but is also demonstrative of the slackness of appreciation of the principles of natural justice and the authoritarian mode of execution of power vested in the authorities concerned. The same is not only impermissible but also unsustainable in the eyes of law. One cannot approbate and reprobate in the same breach, particularly, the Government and its authorities are not at all expected to function in such manner and be allowed to take advantage of one part and reject the rest part of the Agreement. The legal maxim '*quod approbo non reprobo*', gets attracted to the present case and in considered opinion of this Court equity cannot allow any person to approbate and reprobate the same deed (the Agreement dated 5.5.2014 in the present case).

In view of the discussions made above, that part of the order dated 10.3.2015 passed by Respondent No. 2, the Deputy



Chief Storage, BSFC (Headquarter), as contained in Annexure 5, whereby rent has been fixed with regard to the petitioner's godown at serial number 1 is set aside. Respondent No. 3, the District Manager, BSFC, Rohtas at Sasaram has no option but to make payment of rent to the petitioner as fixed by the Sub-Divisional Officer-cum-Rent Controller, Dehri in House Rent Case No.372M of 2014, as contained in Annexure-3 from 15.2.2014 till October, 2016 within a period of six weeks of the receipt/production of a copy of the order, failing which the respondent authorities will be liable to make payment of interest upon the due amount to the petitioner at the rate of 6% per annum.

This writ application is accordingly allowed.

(Dinesh Kumar Singh, J)

Ashwini/-Anil/

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

