

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11282 of 2019

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Ram Gopal Goel, aged about 73 years (Male), Son of Late Mahavir Prasad Goel Resident of Chakardaha, N.H. - 57 (premise of Ashoka Trading Company), Farbisganj, Palasi, District Araria.

... .. Petitioners

Versus

1. The State of Bihar through the Principal Secretary, Department of Food and Consumer Protection, Government of Bihar, Patna.
2. The Principal Secretary, Department of Food and Consumer Protection, Government of Bihar, Patna.
3. The Bihar State Food and Civil Supplies Corporation Limited, Khadya Bhawan, Daroga Prasad Path, R-Block, Road No. 2, Patna-800001, through its Managing Director.
4. The Managing Director, Bihar State Food and Civil Supplies Corporation Limited, Khadya Bhawan, Daroga Prasad Path, R-Block, Road No. 2, Patna- 800001.
5. The S.D.O.-cum-Fair Rent Controller, Farbisganj, District Araria.
6. The District Manager, Bihar State Food and Civil Supplies Corporation Limited, Araria.
7. The Assistant Manager, Bihar State food and Civil Supplies Corporation Limited, Narpatganj, District – Araria.
8. District Magistrate – cum – Collector, Araria.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr.Suraj Samdarshi, Advocate Mr. Piyush Ranjan, Advocate Mr. Vijay Shekhar Tiwari, Advocate Mr. Rajan Prakash, Advocate Mr. Avinash Shekhar, Advocate
For the BSFC	:	Mr. Shailendra Kumar singh, Advocate
For the State	:	Mr. U.P. Singh, A.C. to S.C.4

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

6. **24-10-2019** Heard learned counsel for the petitioner and
- learned counsel representing the Bihar State Food & Civil
- Supplies Corporation Limited.



Several adjournments have been granted in this case to enable learned counsel for the parties to place on record their respective pleadings. The matter has been heard on earlier occasions and the developments have been recorded in the orders passed by this court on different dates.

In order to facilitate a direction to the District Magistrate - cum – Collector, Araria let the District Magistrate – cum – Collector, Araria be added as party respondent No. 8 in course of the Day.

It appears that initially when this petitioner moved before this Court claiming that the respondent Bihar State Food & Civil Supplies Corporation Limited (hereinafter referred to as the “Corporation”) is not paying rent of the godown which was taken on hire by the Corporation from this petitioner for the period 24.08.2014 to 14.01.2019, the respondent Corporation was given an opportunity to file counter affidavit. In the counter affidavit the respondent Corporation did not deny that they have availed the godown of the petitioner on rent



basis. It was also admitted that the Sub-Divisional Officer cum Fair Rent Controller has passed an order vide letter no. 3035 dated 20.11.2016 (Annexure '4' to the writ application) communicated to the District Manager, Bihar State Food & Civil Supplies Corporation Limited, Araria whereunder the rent of the godown has been fixed at the rate of Rs. 9/- per sq. ft. The respondent Corporation however submitted that the competent authority has fixed monthly rent @ Rs. 3.50 per sq. ft. vide letter no. vide letter no. 7914 dated 17.07.2014, but the Rent Controller had fixed the rent three time to the said rate and, therefore, an appeal against the order dated 20.11.2016 passed by the Rent Controller has been preferred before the Collector, Araria giving rise to Appeal No. 02/2019.

Apparently, the Appeal before the Collector, Araria has been preferred during pendency of this writ application and while taking steps towards filing of the counter affidavit. At this stage, by filing a supplementary counter affidavit the respondent Corporation has raised an another plea whereunder it is stated that this petitioner



was acting as a Miller under an agreement as contained in Annexure 'Y' to the supplementary counter affidavit. The petitioner/Miller had received 15702-20 quintal paddy but had failed to return 8360.47 quintal of CMR out of the total 10520.40 quintal of CMR which the petitioner was required to make available against the total quantity of paddy received. For this shortfall a sum of Rs. 1,81,05,099.41 with interest thereon has been sought to be recovered from the petitioner vide Certificate Case No. 03/2014-15. The petitioner has deposited some amount under the Certificate Proceeding but three cheques issued by the petitioner towards payment stood dishonoured on presentation.

Learned counsel for the petitioner submits that the cheques were not honoured on the instruction of the petitioner who had stopped payment.

Be that as it may, now the respondent Corporation claims that the petitioner is liable to pay a sum of Rs. 44,50,896.39, therefore, whatever is the admitted amount to the petitioner @ 3.50 per sq. ft. would



be liable to be adjusted against the amount recoverable from the petitioner. It is also submitted that the entitlement of the petitioner over and above Rs. 3.50 per sq. ft. would be crystalized only after disposal of the pending Appeal before the Collector, Araria.

This Court has been informed that with regard to the liability of the petitioner on account of the balance amount of CMR which is being claimed by the Corporation an arbitration proceeding is going on before the Hon'ble Mr. Justice Ramesh Kumar Datta, a retired Hon'ble Judge of this Court. Learned counsel for the petitioner has submitted that in the arbitration proceeding parties have raised their claim and counter claim but the amount involved on account of the rent of the godown is not subject matter of the arbitration proceeding and no set-off or adjustment otherwise have been provided therein in the counter claim of the Corporation. This being the position, it has been submitted that the issue with regard to payability of the rent has to be treated separately.



Having heard learned counsel for the parties and on a careful perusal of the records this court finds that there are at least two aspects of this matter. First is that there is an admitted dues @ Rs. 3.50 per sq. ft. in terms of their own statement in paragraph '4' of the counter affidavit filed on behalf of the respondent Corporation. At a belated stage that too after filing of the appeal before the Collector, Araria almost after 2 ½ years from the date of passing of the order by the Fair Rent Controller, on the one hand the respondent Corporation has preferred an appeal and at the same time the District Manager, State Food Corporation, Araria has sent a letter to the Deputy General Manager, Storage, State Food Corporation, Head Office, Patna saying that he has passed bills for payment of the rent of the godown @ Rs. 1/- per sq. ft., which, according to this court, is neither in consonance with the own stand of the District Manager, Araria as contained in his letter dated 1244 dated 20.11.2014 available at Annexure '2' to the writ application, nor such a determination could have been done by him on the face of



letter no. 7914 dated 17.07.2014 issued by the Competent Authority that too during pendency of the Appeal. Thus, so far as this aspect of the matter is concerned, for the present, respondent Corporation is bound by its own statements in paragraph '4' of the counter affidavit which in fact amount to admission of claim to the extent indicated therein @ Rs. 3.50 per sq. ft.

The second aspect of the matter is as to whether, at this stage, the claim of the petitioner on the basis of the order passed by the Rent Controller is fit to be allowed and in terms of that order the petitioner be held entitled to get the amount as per the order of the Rent Controller @ Rs. 9/- per sq. ft.

This court having considered these two aspects of the matter would come to a conclusion that at this stage the respondent Corporation would be liable to pay to the petitioner the outstanding rent @ Rs. 3.50 per sq. ft. The entitlement of the petitioner in terms of the order of the Fair Rent Controller would be crystalized only on disposal of the Appeal by the Collector, Araria and for



that reason this court directs the Collector, Araria to dispose off the Appeal bearing no. 02/2019 preferred by the respondent Corporation within a period of four months from the date of receipt/production of a copy of this order.

The respondent Corporation shall calculate the admitted rent of the godown @ 3.50 per sq. ft. and arrive at the amount which the Corporation would be liable to pay to the petitioner. At this stage, this court is of the opinion that if the Corporation is of the view that this amount is required to be adjusted against their counter claim pending before the learned Arbitrator in Arbitration Case No. 03/2019, it will be open for the Corporation, if so advised, to amend it's counter claim after seeking necessary permission from the learned Arbitrator.

If the counter claim is not amended or cannot be amended and this amount is not otherwise given adjustment to the petitioner, the Corporation would be liable to pay this amount to the petitioner within a period of three months from the date of receipt/production of a



copy of this order.

As stated-above, the further entitlement of the petitioner in terms of the order of the Fair Rent Controller would depend upon the outcome of the decision in Appeal No. 02 of 2019 pending before the Collector, Araria.

The Writ Application stands disposed off accordingly.

(Rajeev Ranjan Prasad, J)

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