

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15952 of 2012

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Ranjeet Singh Son Of Late Surendra Prasad Singh Permanent Resident Of Village- Kudra, P.O. and P.S.- Kudra, District- Kaimur Bhabhua And Presently Residing At Mohalla- Gajrarh Gaurakshni, P.O. and P.S.- Sasaram, District- Rohtas Sasaram. Petitioner/s

Versus

Jokhan Pd. Chaturvedi Son Of Late Harihar Chaturvedi Presently Residing At West Of Takiya, Near Railway Gumti, Mohalla- Company Sarai, Ward No.- 2, Holding No.- 214m At and P.O.- Sasaram, District- Rohtas And Permanent Resident Of Village- Gara, Post- Gara, P.S.- Kuchhila, Anchal/ Block- Kochas, District- Rohtas Sasaram. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Rajen Sahay, Advocate
For the Respondent/s : Mr. Siddharth Harsh, Advocate

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

6 10-04-2019 Heard learned counsel for the petitioner and the

counsel appearing on behalf of the State.

2. Petitioner has filed the present writ application challenging the order dated 10.11.98 passed in Case No. 4/HC-1998 whereby the Rent Controller-cum-Sub-Divisional Officer, Sasaram has passed order directing the petitioner-tenant to pay arrears of rent within three months.

3. Learned counsel for the petitioner has drawn attention of this court to the order passed by the Rent Controller. He has drawn attention of the Court to contend that Rent Controller has limited jurisdiction he cannot usurp the power of court of plenary jurisdiction.

4. He submits that Bihar Building (Lease, Rent & Eviction) Control Act, 1982 does not empower the Rent



Controller to pass such order. The order dated 10.11.98 was challenged by the petitioner in Misc. Case No. 25 of 1998 before the Collector, Rohtas, Sasaram. The Collector, Rohtas at Sasaram has perpetuated the same illegality by approving the orders passed by the Rent Controller even the Commissioner, Patna Division and has failed to rectify the mistake committed by the court below in exercising of revisional power and therefore the order of the Collector as well as Commissioner is nullity in the eye of law.

5. Mr. Rajan Sahay has placed reliance on the decision of this Court reported in **AIR 1997 page 137**. The bench of this Court has occasion to examine the scheme of the Act and the Court on consideration of the provision of Bihar Building (Lease, Rent & Eviction) Control Act, 1982 has held out that the power of the Controller is restricted to the extent that he can only determine as to what should be fair rent of building premises. The Controller has not been vested with the power to make order or direction for payment of fair rent or arrears of rent against the tenant.

6. In para-8 the Court summarize the principle applicable to the Tribunal of special jurisdiction and has held out the action of the Rent Controller is in excess or in



contemplation of power conferred are ultra vires and is of no legal effect.

7. In view of the aforesaid, the Court is left with no option but to quash the order of the Rent Controller to the extent of directing payment as contained in Annexure-1.

8. Since the order of the Collector in Appeal and Commissioner suffers from the vice of lack of application of mind as to the core principle that power of the Rent Controller is confined to determination of fair rent and not to determine how to direct recovery of rent.

9. The present application is accordingly allowed.

10. Since order contained in Annexure-1, 2 and 3 is quashed. As a consequence the quashing Annexure-1, 2 and 3 all, consequential action including the consequential proceeding shall be deemed to be without jurisdiction.

11. It is made clear that this order is confined to the part of the order directing payment of arrears of rent and as such other part of the order fixing fair rent by rent Controller remain intact.

(Anil Kumar Upadhyay, J)

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