

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6550 of 2017

Ashok Kumar Gupta son of Late Krishna Kumar Gupta, Resident of Shop No. 9/86-87, Ward No,15, Goenka College, District- Sitamarhi.

... .. Petitioner/s

Versus

1. The State Of Bihar through Secretary-cum-Commissioner, Revenue and Land Reforms Department, Old Secretariat, Patna
2. The District Magistrate, Patna.
3. The Deputy Collector, In-charge, Khasmahal, Sitamarhi.
4. Incharge Officer Khasmahal, Sitamarhi, District- Sitamarhi.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Alok Kumar Jha
For the Respondent/s : Mr.Rishi Raj Sinha-SC19

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

4 22-11-2019 Heard both sides.

The petitioner in this writ petition seeks relief for issuance of writ for setting aside the demand notice dated 28.01.2016 (Annexure-1) issued under the signature of In-charge Officer, Khasmahal, Sitamarhi whereby and whereunder the petitioner has been directed to deposit Rs. 27, 852/- as arrears of rent with fine in District Nazarat. The petitioner further seeks direction to the respondents to issue notice to the petitioner as per prevalent policy for realization of rent.

The facts, bereft of unnecessary details but relevant for disposal of this writ petition, are that the State of Bihar leased out 13 acres of Khasmahal land to S.R.K. Goenka



College, Sitamarhi. The management of S.R.K. Goenka College subleased one bigha thirteen Katha and six dhur of land to 130 shopkeepers for construction of shop and to run their business. The petitioner after taking sublease from the college along with other sub-lessee started paying rent and paid the same till the month of February, 1984. In the year 1984 the District Magistrate, Sitamarhi raised objection on the authority of S.R.K. Goenka College to sublease the part of the land to different shopkeepers including the petitioner on the ground that the management of the college was not vested with power in terms of the agreement of the lease to sublease the land or to transfer the same for other purposes. The Deputy Collector, In-charge, Khasmahal, Sitamarhi, respondent No. 3, issued letter dated 23.02.1984 to the petitioner for settlement of Khasmahal land on which the petitioner was running his shop. Two conditions were mentioned in the said letter, one was that petitioner would have to deposit Rs. 10,000/- as salami for per decimal and Rs. 500/- rent per year as land rent. The letter also shows that the shopkeepers will have to construct shops according to the approved map. The negotiation took place between the shopkeepers and the District Magistrate and ultimately on 22.11.1985 the matter of rent was finalized. It was agreed



between the petitioner and the respondents that rent of the land would be 50 Paise per square feet and Salami of Rs. 10,000.- per decimal would be paid by the petitioner. The petitioner accepted the terms and conditions and deposited the amount of Salami and started paying rent but no agreement as required under the Bihar Government Estates (Khasmahal) Manual, 1953 was ever signed between the petitioner and the respondents. The petitioner took sublease of shop No. 9/86-87. The petitioner deposited the rent up to the year 1998 but after 1998 no demand notice was given to the petitioner. Consequently, the petitioner did not deposit any rent.

The authority suddenly issued demand notice dated 16.07.2005 to the petitioner asking him to deposit the enhanced rent. The petitioner challenged the demand notice before this court vide CWJC No. 1769/ 2006 and this court by order dated 27.01.2011 (Annexure-2) disposed of the writ petition along with other analogous cases with a direction to the Deputy Collector, In-charge, Khasmahal, Sitamarhi to dispose of the objection raised by the petitioner and others within the time frame. The petitioner approached the authority but the objection of the petitioner was neither considered nor decided. The petitioner filed MJC No. 1003 of 2006 in which the opposite



parties filed show cause stating that the objection raised by the petitioner has already been decided and on such the contempt proceeding was dropped vide order dated 03.04.2017 (Annexure-3). Thereafter, the petitioner challenged the fresh demand notice which was served to him.

The learned counsel for the petitioner submits that the Deputy Collector, In-charge, Khasmahal, Sitamarhi calculated the arrears of rent from 1990-2000 to 2013-2014 as Rs. 12 260/- with double of the amount to be arrears and 10% interest thereon which comes to Rs. 27,852/-. It is further submitted that notice was issued to the petitioner enhancing the rent according to provisions as contained in Bihar Khasmahal Policy, 2011 but Bihar Khasmahal Policy, 2011 and its Section 2 (c) is enforceable after its enactment. Having received the notice many shopkeepers filed writ petitions and in CWJC No. 1769 of 2006 and other analogous cases this court directed the authorities to realize the existing rent until fixation of fresh rent in accordance with law vide order dated 27.01.2011 (Annexure-3). It is further submitted that the respondents were well aware that petitioner and others were liable to pay the earlier fixed rent until fixation of fresh rent and, therefore, the demand notice is fit to be quashed.



The State filed counter affidavit. Mr. Rishi Raj Sinha, the learned SC 19, submits that the demand notice was issued on 28.01.2016 after due calculation of the recoverable amount in the light of order dated 27.01.2011 passed in CWJC No. 1769/2006 and other analogous cases as well as in the light of Bihar Khasmahal Policy, 2011. It is submitted that petitioner was required to pay rent regularly even if no notice was issued to the petitioner because it was duty and liability of the petitioner to deposit the rent of leased property regularly. This court vide order dated 27.01.2011 passed in CWJC No. 1769 of 2006 directed the petitioner to file objection within one month from the receipt of the order but the petitioner himself did not pay any heed to the direction and liberty given by this court and did not file petition before 18.08.2015, that is after lapse of five years. Since the petitioner did not file any petition within the stipulated period, prescribed by this court vide order dated 27.01.2011, notice was issued to him. It is further submitted that demand notice dated 28.01.2016 was issued after calculating the demand upon the petitioner according to Bihar Khasmahal Policy, 2011 and there is no illegality in the same.

Having considered the submissions of both sides, I find that earlier petitioner filed CWJC No. 1769 of 2006 and



this court by order dated 27.01.2011 directed the petitioner and other petitioners of analogous cases to raise objection before the Deputy Collector, In-charge, Khasmahal, who shall consider the same and pass appropriate order on the objection of petitioner and others as early as possible, in any case, within two months from filing of the show cause. Petitioner and others should file their show cause within one month from the date of receipt of the certified copy of the order. Until disposal of the objection by the Deputy Collector, In-charge, Khasmahal, Sitamarhi coercive measure be not taken against the petitioners but it appears that petitioner did not file any objection in pursuance of the order dated 27.01.2011 and filed MJC No. 1003 of 2016 raising objection that the Deputy Collector, In-charge, Khasmahal, Sitamarhi has fixed the rent at new rate whereas he should have fixed the rent at the old rate. From perusal of the demand notice (Annexure-1) it is evident that objection of the petitioner, filed belatedly with regard to shop No. 9/86-87, was considered and the prevalent rent from the year 1999-2000 to 2013-14 was assessed as Rs. 27852/- with the penal rent for not paying the rent at the rate fixed with interest thereon. The petitioner being lessee of the shop is required to make payment of rent regularly and if the petitioner fails to pay rent regularly the petitioner



shall be deemed to be defaulter and liable to be evicted from the lease property on the ground of defaulter. The facts of the present case are quite different from the facts of CWJC No. 12279 of 2005. Therefore, I find that realization of the rent with the penal rate and interest thereon on account of non payment of rent for about 15 years is justified and the same requires no interference.

Having considered the facts aforesaid, I find no merit in this writ petition and the same is, accordingly, dismissed.

(Prabhat Kumar Jha, J)

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