

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.730 of 2019

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Renuka Rani wife of Late Chandramauli Mishra resident of Muhalla- New Gosai Tola, Gola Road Danapur, Ward No. 20, Near Dukhan Ram D.A.V. School, P.S. Danapur, District- Patna. Petitioner/s

Versus

1. The State Of Bihar
2. The Chief Secretary, Govt. of Bihar, Patna.
3. The Principal Secretary, Personnel and Administrative Department, Government of Bihar, Patna.
4. The Principal Secretary, Building Construction Department Govt. of Bihar, Patna.
5. The Special Secretary, Vigilance (Cabinet) Department Government of Bihar, Patna.
6. The Additional Secretary, Personnel and Administrative Department Government of Bihar, Patna.
7. The Executive Engineer, Tax Division Building Construction Department, Patna.
8. The Bhu- Sampada Officer Building Construction Department, Patna.
9. The Treasury Officer, Secretariat Treasury Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Maya Shankar Mishra, Advocate
For the Respondent/s : Mr. Partha Sarthi - GA- 4

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

3 14-09-2023 Heard the parties.

2. At the outset, learned counsel for the petitioner submits that he is not pressing the prayers made in (i), (iv) and (v) with the liberty to raise the same by way of separate writ petition. He has confined his prayers to the followings:-

(ii) for quashing the memo No. 649 dated 07.02.2018 issued by the Executive Engineer Tax Division Building Construction Department, Patna whereby and where under the rent of Govt. flat No.



55/800 Shastrinagar, Patna in which the petitioner was residing from date of traceless of her husband i.e. 07.05.1994 to 28.02.2018 was calculated on market and penal rent basis from 06.11.1994 to 31.01.2018 which calculation of market and penal rent is highly illegal, arbitrary and malafied as till 31.01.2018 no single penny with regard to the death-cum- retiral dues of petitioner's husband was not paid to the petitioner and the petitioner is residing in the said flat after interim protection given by this Hon'ble court vide its order dated 08.02.2002 passed in C.W.J.C. No. 1544/2002 and order dated 18.05.2017 passed in L.P.A. No. 897/2012 filed by the state respondents on LA. No. 3684/2017 filed by the petitioner;

(iii) for quashing the letter No. 2340 dated 01.09.2018 issued by the Executive Engineer Tax Division Building Construction Department, Patna by which the Deputy Secretary-cum-Bhu - Sampada officer Building Construction Department, Patna was directed to recover the Govt. Flat Tax (rent of Govt. flat) Rs. 4,96,462/- with regard to Govt. flat No. 55/800 Shastrinagar, Patna from the retiral dues of petitioner's husband which the rent/tax of the said flat was wrongly calculated on the basis of market and penal rent from period 08.11.1994 to 28.02.2018 further for quashing the Memo No. 10176 dated 26.09.2018 issued by the Deputy Secretary-cum-Bhu-Sampada officer to the Additional Secretary Personnel and



Administrative Department directing him to recover aforesaid amount from petitioner;

(vi) for any other relief/reliefs for which petitioner is found to be entitled in the facts and circumstances of the case.

3. The facts of the case is/are as follows:

4. On 07.05.1994, while serving as Personal Assistant to Special Secretary, Vigilance (Cabinet) with the State Government, her husband went missing, The period after which he was presumed dead is 06.06.2001.

5. On 08.02.2002, CWJC No. 1544 of 2002 was filed by the petitioner which was disposed of with the direction to the respondents to pass reasoned order.

6. While disposing of the petition, the respondents were restrained from evicting the petitioner from the quarter she was occupying till her legal dues are paid;

7. The relevant part of the said order is/are as follows:-

It is however, made clear that till legal dues are not paid to the petitioner no coercive action shall be taken against him for vacating the premises where she is living at present. The petitioner is at liberty to file an application before the authority concerned for appointment on



compassionate ground.

8. on 06.08.2002, the claim was rejected and the services of her husband was terminated.

9. This followed CWJC No. 13551 of 2002, the writ petition was allowed on 09.09.2011. The order was quashed with a direction to pay the legal dues within a period of three months. It read as follows:

Accordingly, this writ petition is allowed, order dated 06.08.2002 passed by the Secretary, Department of Personnel and Administrative Reforms, Government of Bihar and communicated to the petitioner vide memo dated 08.08.2002 (Annexure-10) issued by the "Deputy Secretary of the Department, as well as order dated 27.07.2002 (Annexure-12) passed by the Deputy Secretary, Department of Personnel and Administrative Reforms, Government of Bihar are quashed and the respondents are directed to calculate and pay to the petitioner all the service/retiral dues of her husband Chandra Mauli Mishra, who was admittedly a government servant treating him to be dead as per the provision of section 108 of the Evidence Act due to being traceless since 07.05.1994.

The said order must be complied in full by Respondent no.3 within three months from the date of receipt/production of a copy of this order before the Secretary, Department of Personnel and



Administrative Reforms, Government of Bihar (respondent no.3) failing which the petitioner must approach this court for initiating a proceeding for punishing the contemnor for disobedience and violation of this order.

10. Since no action was taken by the State, MJC No. 30 of 2012 was preferred.

11. The State thereafter preferred LPA No. 897 of 2012.

12. During the pendency of the appeal, on 10.04.2017 the Building Construction Department, Bihar directed the Collector Patna to get the petitioner evicted from the Flat No. 55 situated at Shastrinagar, Patna.

13. The petitioner preferred IA No. 6384 of 2017 in LPA No. 897 of 2012.

14. The matter was taken up on 18.05.2017 and direction was given to the respondents not to disturb the lady till the order of the learned Single Judge is implemented in *toto*.

15. The appeal preferred by the State (LPA No. 897 of 2012) came to be dismissed and the Court further held that till the payment is made, she shall be permitted to occupy the quarter by judicial intervention.

16. The relevant paragraphs 7 to 9 read as follows:-

The Court, therefore, in totality does not



feel that the learned Single Judge has committed any aberration in fact or law, which is required to be interfered with and the appeal does not deserve any indulgence in absence of any explanation coming even at this stage, which has been already commented and explained by the learned Single Judge.

The appeal has no merit. It is dismissed. The direction issued by the learned Single Judge must be carried out in terms of the order.

9. It is also made clear that till the State authorities implement the order of the learned Single Judge in toto, they will not disturb the private respondent from the official accommodation which she has been permitted to occupy by judicial intervention. This part of the order especially is reinforced keeping in mind the conduct of the State authorities and their attitude of non- implementation of the judicial order which was passed way back on 09.09.2011.

17. The case of the petitioner is that the payment was finally made in the month of January 2018 and immediately thereafter, she vacated the quarter on 28.02.2018. She submits that due to judicial order, she was occupying the quarter and since the final payment was made on 31.01.2018, she was entitled to stay there on a normal rate and not penal rate which



has been thrust upon her. Learned counsel for the petitioner however, concede that there has been delay in vacating the quarter of one month for which she is ready to pay the penal rent.

18. The Building Construction Department under the signature of the Executive Engineer vide memo no. 649 dated 07.02.2018 (Annexure 12 to the petition) has calculated the rent of the quarter which the petitioner was holding uptill 07.11.1994. It calculated normal rent from 08.11.1994 to 25.02.2013 and commercial-cum-penal rent and from 26.02.2013 to 31.01.2018 totalling Rs. 4,91,482.16/-. The petitioner reiterate that she was holding the quarter in line with the order passed by the Patna High Court in LPA No.897 of 2012 and as such, the respondents are entitled to only the normal rent from 16.01.1987 till 31.01.2018.

19. The counter affidavit of the State is on record and it has been incorporated in paragraph 11 that though she was allowed to reside in the government quarter till final payment is made, it was not the direction of the High Court that she will not pay the rent fixed for the quarter.

20. The said statement of the State is vague. The petitioner has never denied the payment of rent and rightly so.



However, the respondent-authorities cannot realize the market-cum-penal rent if the unrebutted contention of the petitioner that the entire payment was made to her only on 31.01.2018 is true as she was staying by virtue of the order of the Patna High Court in LPA No. 897 of 2012.

21. In that backdrop, the order as contained in memo no 649 dated 07.02.2018 stands quashed.

22. The petitioner shall be approaching the concerned respondent no. 7 by way of representation along with the order within four weeks from today.

23. If such representation is filed, the respondent no. 7 shall look into the matter; consider all the orders passed by the Patna High Court in her case and then will calculate the amount treating her to be a *bona fide* occupier of the flat till final payment was made to her. The necessary order shall be passed within three months from the receipt of copy of the representation.

24. The writ petition stands disposed of.

(Rajiv Roy, J)

Jagdish/Jyoti/-

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