

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13323 of 2021

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Ajay Kumar, S/o Late Surendra Sharma Resident of Village- Nisarpura, P.O.-
Kab, P.S.- Rani Talab, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Govt. of Bihar, Patna.
2. The General Manager, Bihar State Mining Corporation Limited, Patna.
3. The Additional Secretary-cum- Director, Mines and Geological Department,
Patna.
4. The Secretary-cum-Chief Executive Officer, Bihar State Mining Corporation
Limited, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Dinu Kumar, Advocate. Mr. Vardaan Mangalam, Advocate.
For the State	:	Mr. Gyan Prakash Ojha, GA-7. Mr. Abhishek Singh, AC to GA-7.
For Mines	:	Mr. Naresh Dikshit, Spl. P.P. Mines Mr. Utsav Anand, Advocate.

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH

ORAL ORDER

3 04-01-2023 Heard the parties.

The petitioner has filed the present writ petition for
the following reliefs:

(A) For payment of arrears of Rs. 15,000/- rent
of house per month amounting Rs. 4,05,000/- for period 01-
06-2018 to 30-09-2020 and also arrear of house rent from
01-10-2020 to till handing over the possession of the rented
house and arrear of rent of land having an area of Rs.
1,30,089 Sq. ft. @ 50 paise per square feet per month and
ground rent of Rs. 19,82,500/- for period 14-11-2017 to 31-



05-2020 and also arrears of rent of land from 01-06-2020 till handing over the rented land having an area of 1,30,089 Sq. ft. @ Rs. 1 per square feet per month.

(B) Also interest over due rent @ 12.5% and also to hand over possession of rented house and land forthwith after vacating the rental house and land.

(C) Also for necessary relief order/direction for which the petitioner is entitled in the eye of law as well as on facts of the case.

2. The brief facts of the case are that the petitioner executed an agreement dated 14.11.2017 for providing his land to be used by the lessee Bihar State Mining Corporation Limited, Patna. The said agreement has been annexed as Annexure-1 to the writ petition. The petitioner has entered into agreement for rent for 87120 square feet and the agreed amount of rent fixed is at the rate of Rs.1/- per square feet. The total rent at the prescribed rate comes to Rs.87120/- and rent for the house constructed on the said land has been agreed between the parties at the rate of Rs.15000/- per month. Such recital is in Para-2 of the agreement. It has been alleged by the petitioner that he is being paid rent for the total land at the rate of 50 paise per square feet only in breach of the agreement.

3. Learned counsel appearing on behalf of the petitioner submitted that the petitioner has two fold grievance firstly that he must be paid at the rate of Rs.1/- per square feet for the total land measuring 87120 square feet forthwith and secondly for the remaining land measuring 42969 square feet



which is being utilized by the the respondents without entering into any agreement. He submitted that the Depot Manager had already made recommendation to the General Manager (Finance), Bihar State Mining Corporation Limited vide letter dated 09.01.2018 for entering into agreement for the additional total 42969 square feet of land. In such circumstance, learned counsel appearing on behalf of the petitioner submitted that the respondents be directed to perform in terms of the agreement entered between the parties forthwith and make payment of rent at the rate of Rs.1/- per square feet for total land measuring 87120 square feet and 42969 square feet.

4. Learned counsel appearing on behalf of the petitioner further submitted that though he has given legal notice to the Principal Secretary, Mines and Geological Department, Bihar, Patna and the General Manager (Finance), Bihar State Mining Corporation Limited but till date they have not replied. He is ready to make his detailed representation with respect to the admissible dues of rent before the General Manager (Finance), Bihar State Mining Corporation Limited for making payment of remaining amount of rent in terms of the agreement dated 14.11.2017 and also with respect to the remaining land measuring 42969 square feet at the rate of Rs.1/-



per square feet from the date it is being utilized by the respondents in light of the recommendation made by the Depot Manager vide his letter dated 09.01.2018.

5. Learned counsel appearing on behalf of the State submitted that the writ petition is not maintainable as disputed facts cannot be decided in the present writ petition.

6. The objection raised by the respondent is misconceived. The agreement dated 14.11.2017 is a statutory agreement for rent to be paid by the Bihar State Mining Corporation Limited, a State Government Enterprise.

7. Recently the Apex Court in the case of **M.P. Power Management Company Limited, Jabalpur Vs. Sky Power Southeast Solar India Private Limited and Others** reported in **2022 SCC OnLine SC 1591** has held in Para 60 (xii) as under:

“60 (xii). In a case the State is a party to the contract and a breach of a contract is alleged against the State, a civil action in the appropriate Forum is, undoubtedly, maintainable. But this is not the end of the matter. Having regard to the position of the State and its duty to act fairly and to eschew arbitrariness in all its actions, resort to the constitutional remedy on the cause of action, that the action is arbitrary, is permissible (See in this regard *Kumari Shrilekha Vidyarthi v. State of U.P.*[28](#)). However, it must be made clear that every case involving breach of contract by the State, cannot be dressed up and disguised as a case of arbitrary State action. While the concept of an arbitrary action or inaction cannot be cribbed or confined to any immutable mantra, and must be laid bare, with reference to the facts of each case, it cannot be a mere allegation of breach of contract that would suffice. What must be involved in the case must be action/inaction, which



must be palpably unreasonable or absolutely irrational and bereft of any principle. An action, which is completely malafide, can hardly be described as a fair action and may, depending on the facts, amount to arbitrary action. The question must be posed and answered by the Court and all we intend to lay down is that there is a discretion available to the Court to grant relief in appropriate cases.”

8. The facts reveal that as per recital made in Para-2 of the rent agreement, the respondents are liable to make payment at the rate of Rs.1/- per square feet on the total land measuring 87120 square feet, the sum of total of which comes to Rs.87120/- and rent for the house to be paid separately at the rate of Rs.15000/- per month. The petitioner has stated in the writ petition that the respondents are not making payment even for the total 87120 square feet at the agreed rate of Rs.1/-. They have only made payment at the rate of 50 paise per square feet without there being any alteration or any modification in the agreement.

9. Perusal of Annexure-3 to the writ petition, it appears that the remaining land belonging to the petitioner measuring total area 42969 square feet has also been occupied for the purpose of storage of buffer stock of sands at Nisarpura. A recommendation was made vide letter dated 09.01.2018 itself by the Depot Manager, Nisarpura Buffer Centre to the General Manager, Finance, Bihar State Mining Corporation Limited, Patna to enter into agreement for fixation of rent.



10. After the contract is entered into, there can be a variety of circumstances, which may provide a cause of action to a party to the contract with the State, to seek relief by filing a writ petition. Without intending to be exhaustive, it may include the relief of seeking payment of amounts due to the aggrieved party from the State. The State can, indeed, be called upon to honour its obligations of making payment, unless it be that there is a serious and genuine dispute raised relating to the liability of the State to make the payment. Such dispute, ordinarily, would include the contention that the aggrieved party has not fulfilled its obligations and the Court finds that such a contention by the State is not a mere ruse or a pretense. In the present case, the action of the State is Palpably unreasonable, irrational, malafide and arbitrary by making payment of rent at the rate of 50 paise per square feet in place of agreed term at the rate of Rs.1/- per square feet and in the light of the above mentioned verdict of the Apex Court, the present writ petition is maintainable.

11. In view of admitted position, Respondent no.2- General Manager (Finance), Bihar State Mining Corporation Limited, Patna is directed to make payment of all the dues amount of rent to the petitioner in terms of the agreement dated 14.11.2017 within a period of four weeks from the date of



receipt/communication of this order.

12. The petitioner in light of letter dated 09.01.2018 may make his request before the concerned respondents to enter into mutual agreement or claim rent for the period for which he has not been paid for total 42969 square feet of land being engaged for the purpose of storage of buffer stock of sands from the period the same is used by the Respondent on the agreed terms.

13. Accordingly, the writ petition stands allowed.

(Purnendu Singh, J)

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