

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3919 of 2017

Ashok Kumar Singh Son of Late Awadhesh Kumar Singh, Resident of
Mohalla Dahiyawan Tola, North of Railway Line, Town- Chapra, P.O.-
Chapra, Police Station- Chapra Town, District- Saran.

... .. Petitioner

Versus

1. The State Of Bihar
2. The Collector, Saran at Chapra Appellate Authority against rent Controller.
3. The Programme Officer, Chapra Collectorate Saran, Chapra.
4. The C.D.P.O., Rural, Sadar Chapra.
5. The S.D.O. Chapra Sadar cum Rent Controller, Saran at Chapra.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr.Nagendra Rai, Advocate
For the Respondent/s	:	Mr. Gyan Prakash Ojha, G.A.-7. Mr. Ajit Kumar, A.C. to G.A.-7.

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT

Date : 21-02-2024

Heard learned counsel for the parties.

2. This writ petition has been filed for the following
reliefs :-

*(i) Quashing the order dated 10.01.2017 (Annexure-
6) passed by the respondent No.2 in Rent Control Appeal
N.03 of 2010.*

*(ii) Quashing the entire proceeding of Rent Control
Appeal No.03 of 2010 in the Court of the respondent No.2
as nonest in the eye of law.*

*(iii) Commanding the respondents to pay the
arrears of rent @ Rs.38,00/- per month with interest at
the rate of 12% per annum from the date of liability till*



the date of payment within a specific time limit as may be stipulated by this Hon'ble Court.

3. It is the case of the petitioner that he let out his residential premises bearing Holding No.11, Ward No.19, Circle No.17 situated in Mohalla: Dahiyawan Tola, Town- Chapra, P.S. Chapra Town, District- Saran on 01.12.2002 to the respondent No.4 (C.D.P.O., Rural, Chapra) for running office of Chief Development Project, Chapra Rural initially for period of eleven months but the office of the Respondent No.4 continued in the same premises as tenant. The respondent no.4 sent a letter to the respondent no.5 (S.D.P.O., Chapra-cum-Rent Controller, Saran at Chapra) to fix the fair rent of the aforesaid rented premises. Thereafter, the respondent No.5 after making necessary inquiry fixed the monthly rent of Rs.3800/- of the rented premises in question vide order dated 24.11.2003 and this rent was made applicable from 01.12.2002. Against the aforesaid order of the respondent No.5, no Appeal was filed but the respondent No.4 continued to pay rent @ 1200/- per month till February, 2007. From March, 2007 to February, 2009 the rent was paid @ 3000/- per month.

4. It is also the case of the petitioner that on 01.09.2008, he sent a legal notice to the respondent No.4 for payment of arrears of rent but from February, 2009, the respondent No.4



stopped making payment of rent. In these circumstances, the petitioners filed Execution Case No.04/10 on 19.03.2010 in the Court of Sub-Judge-1, Chapra for realization of the arrears of rent pursuant to the order of respondent no.5. However, the respondent no.4 filed Appeal No.3 of 2010 on 30.06.2010 against the order of the Respondent no.5 (Rent Controller), i.e., after eight years.

5. It is further the case of the petitioner that the Collector, Saran at Chapra, who is the Appellate Authority has admitted the appeal by condoning the delay in filing the appeal. When the petitioner came to know about the same, he filed an application in the said appeal for deciding the point of limitation but the same was kept pending. Ultimately, the petitioner filed C.W.J.C.No. 10393 of 2013 challenging the order of condonation of limitation and the continuance of the Appeal as also for payment of arrears of rent. This Court after hearing the parties, allowed the said writ petition vide order dated 04.08.2015 by holding that the Collector was not authorized to admit appeal and accordingly, the order dated 04.08.2010 passed by the Collector, Saran at Chapra admitting the appeal after condoning the delay in filing the appeal was quashed by this Court. The matter was not remanded for fresh consideration. The order dt. 04.08.2015 passed in C.W.J.C. No. 10393 of 2013 reads as follows :-



“Heard learned counsel for the petitioner and learned AC to GA-10.

The petitioner, who is a landlord and in whose premises one of the wings of the Government of Bihar is running Office of the Child Development Project, Chapra Rural, has approached this Court, invoking its writ jurisdiction under Article- 226 of the Constitution of India with a prayer to quash an order dated 04.08.2010 passed by the Collector, Saran at Chapra (Respondent no.2), whereby he has admitted the appeal ise. Rent Control Appeal no.3 of 2010 after condoning delay and directed for staying of the order dated 24.11.2003 passed by the House Development Project Officer filed an appeal before the Collector, Saran vide House Control Appeal no.3/10 and the District Collector has admitted the appeal after condoning the delay, which is under challenged in the present writ petition.

Learned counsel for the petitioner submits that in the petition filed along with appeal for condoning delay, unsustainable stands were taken by the Child Development Project Officer. Virtually, she had made frivolous allegation against the then Child Development Project Officer and also Circle Officer. He submits that the appeal was preferred after about seven years from the order of the House Controller that too after the execution case was filed by the petitioner. It has been argued that once the appeal was barred by limitation, the appellate authority at least without notice to the petitioner was not at all authorized to admit the appeal.

Learned State Counsel has opposed the prayer of the petitioner. He submits that of course delay had occurred, but along with appeal limitation petition was filed. However, he has not disputed the fact that limitation was condoned without notice to the petitioner.

In view of facts and circumstances, particularly, the fact that rent was fixed on the prayer made by the Child Development Project Officer and that too said order was passed by the House Controller



in the year 2003 without any notice to the petitioner, the appellate authority was not justified to condone delay and admit the appeal. In any event, the learned Collector was not authorized to admit appeal and pass order of stay of the order of the House Controller. In view of the facts and circumstances, the Court is of the opinion that the order impugned is liable to be set aside.

Accordingly, the order dated 04.08.2010 passed by the District Collector, Saran at Chapra in Rent Control Appeal No.3 of 2010 is hereby set aside. The writ petition stands allowed.”

6. However, the Collector, Saran at Chapra vide order dated 10.01.2017 disposed of the Appeal by directing the C.D.P.O. to pay arrears of rent @ 3100/- per month without even considering the aforesaid order dated 04.08.2010, which is impugned in the present petition.

7. Learned counsel for the petitioner submits that the impugned order is in teeth of the order of this Court passed in C.W.J.C. No. 10393 of 2013, by which this Court has quashed the order admitting the appeal. He further submits that this Court in the order dated 04.08.2015 has categorically stated that the Collector in any event could not admit appeal and stay the order of Rent Controller, but without appreciating this fact, the impugned order has been passed by the Collector.

8. That in course of argument, learned counsel for the respondent-State has accepted the fact that order dated 10.01.2017



passed by the Collector, Saran in House Control No.03 of 2010 is illegal and cannot be sustained.

9. I have considered the submissions of the parties and also perused the materials on record including the impugned order. It appears from the record that earlier the petitioner has moved this Court in C.W.J.C. No.10393 of 2013 against the order dated 04.08.2010 by which the Collector has admitted the appeal, i.e., Rent Control Appeal No.3 of 2010 after condoning the delay in filing the appeal and this Court vide order dated 04.08.2015 has quashed the order dated 04.08.2010. While quashing the order, the order dated 04.08.2010, this Court has not remanded the matter to the Collector. But the Collector has passed the impugned order by which he has disposed of the appeal on merits and directed the C.D.P.O. to pay arrears of rent @ 31,00/- per month which is illegal. When the order of admission of the appeal itself was set aside by this Court then the impugned order disposing of the aforesaid appeal is not sustainable in the eye of law.

10. In view of the aforesaid, the impugned order dated 10.01.2017 passed by the Collector, Saran at Chapra in Rent Control Appeal No.3 of 2010 is hereby quashed and the order dated 24.11.2003 passed by the S.D.O.,-cum-Rent Controller,



Saran at Chapra is revived. The petitioner is entitled to the rent as decided by the order dated 24.11.2003.

11. In such circumstances, the District Magistrate, Saran at Chapra is directed to pay the arrears of rent, as decided by the Rent Controller, within two weeks from the date of receipt/production of a copy of this order with interest at the rate of 6 per cent per annum to the petitioner after adjusting any amount which has already been paid to the petitioner.

12. With the aforesaid observation and direction, this writ petition stands allowed.

(Sandeep Kumar, J)

sanjeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.03.2024
Transmission Date	NA

