

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- Hon'ble Justice Amrita Sinha

WPA No. 25922 of 2024

Md. Fahim Haider
Vs.
State of West Bengal & Ors.

For the writ petitioner	:-	Mr. Sagar Bandopadhyay, Sr. Adv. Ms. Soma Kar Ghosh, Adv. Ms. Suparna Paul, Adv.
For the State	:-	Mr. Malay Kumar Dey, Adv. Ms. Neelam Singh, Adv.
Heard on	:-	12.02.2025
Judgment on	:-	26.02.2025

Amrita Sinha, J.:-

1. The petitioner is aggrieved by the communication made by the Additional District Magistrate (Try), North 24 Parganas being memo no. 234/1(4)/DPO/ICDS dated 9th March, 2023 intimating the petitioner that house rent of office accommodation of the Bhatpara ICDS project has been approved at Rs. 6,309/- (six thousand three hundred nine only) per month with effect from 1st August, 2020 inclusive of all taxes, outgoing and normal repair for hiring of the building of the petitioner.

2. The petitioner is the owner of the subject premises and has let out the same on rent to the Child Development Project Officer, for running the Bhatpara ICDS project under the Directorate of Social Welfare, Government of West Bengal. A deed of lease was executed on 29th June, 1991 and the said

lease was valid from 1st July, 1991. The initial rent of the subject premises was fixed at Rs. 1,690/- (one thousand six hundred ninety only).

3. The rent was revised in the year 2002 and the same was raised to Rs. 2,434/- (two thousand four hundred thirty-four only) per month with effect 1st August, 2002. With effect from 1st August, 2007 the rent was revised to Rs. 2,921/- (two thousand nine hundred twenty-one only) per month and the rent with effect from 1st August, 2012 was fixed at Rs. 3,505/- (three thousand five hundred five only) per month. On and from 1st August, 2017 the rent stood revised to Rs. 4,206/- (four thousand two hundred six only) per month.

4. Vide communication dated 10th December, 2020 by the Special Land Acquisition Officer, North 24 Parganas, Barasat, the petitioner was intimated that fair rent for the subject premises has been assessed at Rs. 19,450/- (nineteen thousand four hundred fifty only) with effect from 1st December, 2020.

5. Though the Special Land Acquisition Officer assessed the fair rent of the subject premises at Rs. 19,450/- (nineteen thousand four hundred fifty only) but, surprisingly, the enhanced rent was never paid to the petitioner. By the impugned communication dated 9th March, 2023 the petitioner was intimated that sanction has been granted for Rs. 6,309/- (six thousand three hundred nine only) as monthly rent. The petitioner is aggrieved by the same.

6. It has been submitted that the rent has been revised and reduced unilaterally without affording any opportunity of hearing to the petitioner. The same is arbitrary exercise of power. Discrimination has been alleged. It has been submitted that the guidelines/ circulars applied for fixing the rent were not properly considered. Rent has been fixed without properly assessing the

existing market value of the subject premises. Once the rate stood revised in 2020 the same could not have been revised further in 2023 in view of the bar imposed in the guideline published by the Deputy Secretary to the Land and Land Reforms department on 29th April, 2013.

7. The petitioner contends that he has been deprived from enjoying his property as per his choice and desire as the authority is not paying him the proper fair rent which the subject property will fetch.

8. Prayer has been made to direct the respondent authority to disburse rent in terms of the assessment of fair rent made by the Special Land Acquisition Officer, North 24 Parganas, Barasat on 10th December, 2020.

9. Prayer has also been made seeking direction upon the respondents not to give any effect and/or further effect to the subsequent revision of rent communicated to the petitioner vide the impugned communication dated 9th March, 2023.

10. In support of the submission that the writ petition will be maintainable on this score and the dispute cannot be treated as a regular landlord-tenant dispute, learned advocate for the petitioner relies on the judgment delivered by the Hon'ble Supreme Court in the matter of ***B. L. Chakraborty alias Binode Lal Chakraborty vs. State of West Bengal & Ors.*** reported in ***(2005) 12 SCC 148: 2005 SCC Online SC 509.***

11. Reliance has also been placed on the judgment delivered by the Hon'ble Supreme Court in the matter of ***Subodh Kumar Singh Rathour vs. The Chief Executive Officer & Ors.*** reported in ***(2024) SCC Online SC 1682*** on the point of scope of judicial review in matters pertaining to contractual disputes.

12. Learned advocate representing the State respondents opposes the prayer of the petitioner. The instruction forwarded by the Special Land Acquisition Officer, North 24 Parganas, Barasat has been placed before this Court. The stand of the State is that the first deed of lease between the petitioner and the State authority (CDPO), Bhatpara, ICDS project was executed on 1st March, 1983 and fair rent was fixed at Rs.660/- (six hundred sixty only) per month including all taxes and outgoing and normal repairs. Rent was thereafter enhanced to Rs.1,130/-(one thousand one hundred thirty only) per month with effect from 1st April, 1990 for total floor space of 910 sq.ft.

13. First floor of the subject premises was taken on lease on and from 1st April, 1991 and fair rent was fixed at Rs.1,990/- (one thousand nine hundred ninety only) per month for total area of 1405 sq.ft. Time and again fair rent stood increased. Based on the Government Order dated 29th April, 2013 a fresh assessment of rent of the existing premises hired thirty years back was made. An enquiry was made on 25th November, 2020 and fair rent was assessed at Rs.19,450/- per month for total floor space of 1231.46 sq.ft. with effect from 1st December, 2020.

14. The Additional Secretary to the Government of West Bengal department of Women and Child Development and Social Welfare opined that revision of rent from Rs. 4,206/- per month to Rs. 19,450/- per month was more than five times and a request was made to justify the hike. The Special Land Acquisition Officer reviewed the matter and the rent stood revised to Rs. 6,309/- per month with effect from 1st August, 2020 and the same was communicated to the petitioner vide memo dated 9th March, 2023.

15. According to the respondents, the assessment made in the year 2020 was erroneous. The five-fold hike in rent made in the year 2020 was not approved by the department. The Additional District Magistrate (Try), North 24 Parganas has sanctioned the enhanced rent to the tune of Rs. 6,309/- per month in line with the Government Order of the years 1994 and 2013.

16. It has been submitted that as rent was assessed inadvertently in the year 2020, accordingly, payment could not be made to the petitioner. The District Magistrate has limit to sanction office rent only up to Rs. 8,000/- per month. Approval was sought for from the department in the year 2022. For assessment of rent in respect of the premises which was hired thirty years back, provision of GO no. 1831(96-LR) dated 23rd November, 1994 is followed.

17. Prayer has been made to dismiss the writ petition by affirming the rent assessed by the respondent authority and communicated to the petitioner vide impugned communication dated 9th March, 2023.

18. I have heard and considered the rival submissions made on behalf of both the parties and have perused the materials on record.

19. To answer the first query of the Court as to whether the writ petition will be maintainable to decide a landlord-tenant dispute arising out of the deed of lease executed by and between the petitioner and the State, the petitioner has relied on the judgment delivered by the Hon'ble Supreme Court in the matter of B. L. Chakraborty (supra) wherein the Court took into consideration the writ petition regarding fixation of rent and consequently the quantum of arrears and whether the arrears were liable to be paid with interest or not. The Court was of the opinion that as the respondent was a 'State' within the meaning of

Article 12 of the Constitution, accordingly, the Court entertained the writ petition and passed necessary order.

20. In the instant case, admittedly, the State authority is the lessee and only for the purpose of providing immediate relief to the petitioner who alleges non payment of fair rent, the instant writ petition is being entertained. Not entertaining the writ petition and relegating the petitioner to the competent civil court would be sheer injustice as the State /lessee is enjoying the leased property without paying fair rent, which cannot be supported in law. The State/lessee ought not to deprive the lessor from his legitimate and legal claim for rent. The law laid down by the Hon'ble Supreme Court in B.L. Chakraborty (supra) will squarely be applicable here.

21. The report of the surveyor engaged by the State, relying on which the rent of the subject premises stood revised in the year 2020, is annexed to the report filed by the State.

22. For calculating the fair rent of the subject premises, the order by the Collector, North 24 Parganas being memo no. 2103(2)/LA(N)/BST dated 23rd November, 2020 prescribing flat rate of rent at Rs. 15.80/- per sq. ft. was taken into consideration. The area of the leased premises was physically measured and the same was found to be 1231 sq. ft. Applying the flat rate sq. ft. formula, the rent stood assessed at Rs. 19,449.80/- (1231.00 sq. ft. x Rs. 15.80 = 19,449.80/-). The petitioner was intimated about the assessment of fair rent of Rs. 19,450/- with effect from 1st August, 2020 as per the aforesaid calculation.

23. In the report filed by the State there is no mention about the flat rate per sq. ft. formula being accepted for collection of fair rent in the locality; on the

contrary guidelines mentioned in GO no. 1831(96-LR) dated 23rd November, 1994 is said to be followed. GO no. 1831(96-LR) dated 23rd November, 1994 mentions that revision of rent for hired accommodation originally hired thirty years back or earlier should be assessed in terms of the circular no. 590 dated 11th August, 1993. The revision should, under no circumstances, be more than 150% of the existing rent fixed or revised.

24. GO no. 590 dated 3rd August, 1993 mentions that the maximum permissible limit of increase of rent after expiry of five years shall be 20%. GO no. 2136 dated 29th April, 2013 mentions that, in case of assessing rent for the premises hired thirty years back, GO no. 1831 dated 23rd November, 1994 is generally followed. In those cases, the assessment has to be treated as a fresh one.

25. The 2013 Government Order also mentions that cases where fixation and/or revision of rent in respect of a premises is already settled and accepted by the Government in a manner other than the manner mentioned above, should not be reopened for re-determination of such rent during the validity period of such fixation/revision and current market rate of rent should be considered while updating the rate chart.

26. From the instruction forwarded by the State respondents it appears that the rent of the petitioner stood revised relying on the order of the Collector, North 24 Parganas, Barasat taking into consideration flat rate of rent of Rs. 15.80/- per sq. ft. The premises was inspected and a rough sketch, noting all the measurements and features, signed by the representative of the requiring body and the house owner was prepared. It was found that the condition of the subject premises is good.

27. The 2013 GO requires that current market rate of rent should be considered while updating the rate chart.

28. The respondent authority appears to have mechanically assessed the rent without considering the flat rent that is applied to assess rent of the rented premises in the area relying on the order of the Collector.

29. The GO of 2013 also lay down that for assessment of rent of a premises, the market rate of rent prevailing in the area should be ascertained by the land acquisition authority. For applying the cap of not revising the rent to more than 150% of the existing rent, the authorities ought to adopt a pragmatic and practical approach for assessment of fair rent.

30. As the rate of fair rent to be fixed at a place is the prerogative of the State respondents, the Court would not like to embark on a journey as to whether the rent assessed in the years 2020 and 2023 are proper or not. It is the discretion of the landlord and tenant whether to accept the amount of rent assessed by the authority or not and it is also the prerogative of the lessor whether to continue with the lease agreement if the fair rent assessed by the State is not acceptable to him.

31. The Court is only required to ensure that assessment of fair rent of any structure is made in accordance with the prevailing guidelines. The quantum of rent in respect of a subject premises, if let out for private purpose, is fixed upon mutual discussion between the lessor and the lessee. It is not proper for the Court to fix up any rate of rent in respect of private premises let out to private parties. As the petitioner has let out his premises to an authority which qualifies as 'State' under Article 12 of the Constitution, accordingly, the

petitioner, as lessor, would be bound by the fair rent as fixed by the government.

32. Here, it appears that diverse Government Orders were considered for assessing the fair rent of the petitioner's premises. First, the memo no. 2103(2)/LA(N)/BST dated 23rd November, 2020 was applied but thereafter the said memo was given a go-by and other Government Orders were followed. No justification has been forwarded for taking such a stand. On both occasions assessment was made by the government officers. Such inconsistent stand cannot be accepted by the Court.

33. For assessment of fair rent at a particular place, a uniform method or guideline ought to be followed. The lessor or landlord ought not to feel deprived of fair rent for letting out private premises to the State. The party should not suffer from a sense of financial loss.

34. As regards the allegation of violation of the principle of natural justice in revising the rent unilaterally, the petitioner has not made a single averment as to whether any opportunity of hearing was given to him on earlier occasions when rent was revised by the State. On the contrary it appears that, rent stood revised from time to time relying on the Government Orders. There is nothing on record to suggest that hearing was ever given to the petitioner prior to revision of rent. That being so, the allegation of the petitioner regarding unilateral revision of rent remains unfounded.

35. In view of the above, the District Magistrate, North 24 Parganas is directed to revisit the issue of assessment of fair rent of the petitioner's premises by taking a holistic view for assessment of fair rent of the private premises let out for public purpose. The prevailing current market rent shall

be taken into consideration. An even and consistent guideline should be applied universally in all similar cases.

36. The District Magistrate is directed to take a prompt decision in the matter and ensure that fair rent is duly disbursed in favour of the petitioner at the earliest but positively within a period of eight weeks from the date of communication of this order. The communication of the Special Land Acquisition Collector dated 10th December, 2020 and the subsequent impugned order of the Additional District Magistrate (Try) dated 9th March, 2023 is directed to be kept in abeyance till a fresh order is passed by the District Magistrate.

37. The writ petition stands disposed of.

38. Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)