
(2015) 02 PAT CK 0085

Patna High Court

Case No: CWJC Nos. 10986 of 1995 and 5407 of 1997

Central Bank of India
and Others

APPELLANT

Vs

The State of Bihar and
Others

RESPONDENT

Date of Decision: Feb. 16, 2015

Acts Referred:

- Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 - Section 5, 6, 8, 8(1)(C), 8(i)(c)
- Civil Procedure Code, 1908 (CPC) - Section 115

Citation: (2015) 2 PLJR 560

Hon'ble Judges: Shivaji Pandey, J

Bench: Single Bench

Advocate: Ajay Kumar Sinha, for the Appellant; Indradeo Shaw, Arvind Kumar Sharma and Chetan Kumar, Advocates for the Respondent

Final Decision: Allowed

Judgement

Shivaji Pandey, J.

Heard learned counsel for the petitioners, the State and respondents of both cases. Both cases are being disposed of by this common order as the issues involved in both cases are same with respect to same premises. From the side of Central Bank of India it is challenging the order of House Controller dated 13.10.1992 passed in House Control Case No. 13 of 1991-92 whereby he has fixed the fair rent of the premises at the rate of Rs. 18,000/- per month, the order dated 20.6.1994 passed by the Appellate Authority-cum-Collector, Munger in Appeal No. 4/1992-93 whereby he has reduced the fair rent of the premises to Rs. 14,000/- per month and also challenging the order of revisional authority in House Control Revision No. 4/1994-95 whereby first he fixed the rent provisionally at the rate of Rs. 8500/- and confirmed the same vide order dated 2.6.1995, whereas petitioner of C.W.J.C. No. 5403 of 1997 (Niranjan Lall Singhai v. The

State of Bihar and Ors.) has not challenged the order of House Controller rather he has challenged the order of the appellate authority in Appeal Case No. 4/1992-93 as well as the order of the Commissioner on the ground of suffering from illegality and are liable to be quashed.

2. The brief fact of the case is that the two storied building situated at Badi Bazar at Munger having total area of 5100 sq. ft. was given on rent on lease to the Central Bank of India. As per counsel for the Niranjn Lall Sanghai-petitioner the premises in question was given on lease for seven years in the year 1970 and thereafter it was further extended to five years. At that time the rent was fixed at the rate of Rs. 1,300/- and it was extended at the rate of Rs. 1,800/-. The tenancy was ultimately expired on 31.12.1987. After expiry, the petitioner-Niranjn Lall Sanghai requested for enhancement of rent but the Bank refused to enhance. That led to filing of an application before the Rent Controller-cum-S.D.O., Munger on 25.2.1992 (Annexure-9 of C.W.J.C. No. 5403 of 1997) claiming that the prevailing rate of rent in the area was Rs. 4-5 per sq. ft. The case was registered as Case No. 13 of 1991-92, the House Controller, before deciding the rent of area, sought report from the Executive Magistrate about prevailing rate of rent in the market area whereupon he submitted enquiry report dated 16.4.1992 (Annexure-10), found the prevailing rate at the area for Rs. 4-5 per sq. ft, recommended fair rent of Rs. 25,000/- per month. The Controller having taken into consideration the report of the Executive Magistrate and other relevant factors arrived at the conclusion for fair rent at Rs. 3.50 per sq. ft. Accordingly he fixed the rent at Rs. 18,000/- per month.

3. The petitioner-Niranjn Lall Sanghai was satisfied with the order of House Controller, he did not file the appeal but the Bank being aggrieved by the order of the House Controller filed an appeal before the Appellate Authority-cum-Collector, Munger, which was registered as House Control Appeal No. 4/1992-93, the Collector reduced the rent from Rs. 18,000/- to Rs. 14,000/-. The order of Collector did not satisfy either of the parties. Both moved revisional court, the revision filed by the petitioner-Bank was registered as Revision Case No. 4/1994-1995 and revision filed by Niranjn Lall Sanghai was registered as House Control Revision No. 5/1994-95. The Commissioner passed the order dated 13.1.1995 whereby he has provisionally fixed the rent at the rate of Rs. 8,500/-. Liberty was given to the parties to produce the materials to show the enhancement of cost of construction of the house, as no party had produced the material, the Commissioner confirmed the provisional rent vide order dated 2.6.1995 as both the parties felt aggrieved by the orders of the revisional court, have challenged the same in this proceeding.

4. The learned counsel for the petitioner-Niranjn Lall Sanghai submits that the revisional court misdirected itself in passing the impugned order in such manner as was functioning as trial court, while exercising the power of revisional court, he was required to satisfy itself about the legality, propriety and perversity in the order passed by the appellate court. He did not record any error in the order either in the order of the House Controller or in the order of Appellate Court. The fair rent of Building will be fixed on the basis of rent

of similar type of Building of surrounding area. The counsel for Bank has submitted that the fair rent has not been fixed in terms of the provisions of B.B.C. Act. He has further submitted that the fair rent was required to be fixed in terms of the rent which was prevailing during 1980 added with 25% over the said amount. Learned counsel for Niranjana Lall Sanghai-petitioner in support of his submission relied upon judgments of this Court reported in [Saraswati Devi and Others Vs. Commissioner of Bhagalpur Division](#) and [Shree Bhagwati Hosiery Mills Pvs. Ltd. Vs. State of Bihar and Others](#), (1998) 1 BLJR 219 : (1999) 1 PLJR 897 : (1998) 2 PLJR 328 : (1997) 2 PLJR 470 . This Court in Division Bench has expounded the elements to be taken while deciding fair rent of premises and has taken into consideration the relevant factors while fixing the fair rent of the premises.

5. Counsel for the Bank has submitted that all the three authorities have committed error of law in fixing the fair rent in terms of Section 8 of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982. What was the fair rent in 1980 was required to be first adjudicated and there could have been enhanced only by 25%. He has further submitted that the judgments reported in [Saraswati Devi and Others Vs. Commissioner of Bhagalpur Division](#) and [Shree Bhagwati Hosiery Mills Pvs. Ltd. Vs. State of Bihar and Others](#), (1998) 1 BLJR 219 : (1999) 1 PLJR 897 : (1998) 2 PLJR 328 : (1997) 2 PLJR 470 are the judgments per incuriam as the Court in both the cases have not properly considered Section 8 of the Bihar Buildings (Lease, Rent and Eviction) Control Act. Counsel for the petitioner-Bank submits that the order of all the three courts have gone beyond parameter of the legislative mandates and the guidelines which has been provided in Section 8 of B.B.C. Act and Rule 3 of Bihar Buildings (Lease, Rent and Eviction) Rules, 1983 but the counsel for the petitioner in support of his argument has not relied upon judgment whereas the counsel for the petitioner of CWJC No. 5403/1997 has submitted that the fair rent has to be fixed on the basis of rent prevailing in that area at the relevant time and further submitted that Section 8 has been interpreted by this Court in two Division Bench judgments in *Saraswati Devi* (supra) and *Shree Bhagwati Hosiery Mills Pvt. Ltd.* (supra). In both the cases the courts have considered the parameter for fixation of fair rent and also have considered the context of proviso and relativity of cut off date has also been considered. It is further submitted that the aforesaid two Division Bench judgments have assigned reasons for taking base year 1980 and method of fixing the fair rent of premises as has been mentioned in Section 8 of the B.B.C. Act.

6. For proper consideration it would be proper to consider the provisions of Sections 5, 6 and 8, which are as follows:--

"5. Determination of fair rent of buildings in occupation of tenants.--(1) When, on application by the landlord or by the tenant in possession of a building or otherwise, the Controller has reason to believe that the rent of that building is low or excessive, he shall hold a summary inquiry and record a finding.

(2) If, on a consideration of all the circumstances of the case, including any amount paid by the tenant by way of premium or any other like sum in addition to the rent, the

Controller is satisfied that the rent of the building is low or excessive, he shall determine the fair rent for such building.

6. Determination of fair rent of buildings not in occupation of tenants.--The Controller may, on his own motion and shall, on the application of the landlord or a prospective tenant and after making such enquiry, as he thinks fit, determine the fair rent for any building not in the occupation of a tenant.

8. Matters to be considered in determining fair rent.--(1)(a) For the purposes of this Act, the fair rent of a building shall be determined as for a tenancy from month to month.

(b) The fair rent of a building shall be determined in accordance with the rule framed for this purpose.

(c) In determining the fair rent of any building under Section 5 or 6, the Controller shall have due regard to the prevailing rates of rent in the locality for the same or similar accommodation in similar circumstances at any time during the twelve months preceding the first day of December 1980, and to the increased cost of repairs, and in the case a building which has been constructed after that date, also to any general increase in the cost of site and building construction:

Provided that where the Controller is satisfied, on an application made to him by the landlord under section 5, that the rent of a building referred to in this clause is low, the Controller shall, in determining the fair rent of such building to be payable by a tenant, fix the rent of the building at a figure which shall not be less than the average monthly rent actually paid for the same or similar accommodation by any tenant over the period of twelve months preceding the first day of December, 1980, increased by not more than 25 per cent of the average monthly rent so received by the landlord during the aforesaid period in addition to the enhancement, if any, on account of the increased cost of repairs or the general increase in the cost of sites and building construction, where such enhancement is admissible under the foregoing provision of this clause."

7. Having considered the rival contentions of the parties, for coming to a right conclusion, it will be appropriate to examine the earlier judgments of this Court dealing with the fixation of fair rent as in those cases, identical issue was raised. In *Saraswati Devi's* case (supra), the Court had an occasion dealing with the fixation of fair rent in terms of Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 there also the identical issue was raised in what matter what are the factors and guidelines would be taken by the rent controller in fixing the fair rent of a building and the Court has considered the Section 8 of the Act and its proviso has also dealt with why the Legislature has taken 1st December, 1980, as base year, for the purpose of deciding the fair rent, the Court has examined the formulation of the different sections of the B.B.C. Act as well as purpose of different provisions of Bihar Building Control Act.

8. The Court has held that the guideline for deciding the fair rent would be based on prevailing rate of rent in the locality for similar accommodation in similar circumstances. But primarily it has to be decided keeping in view of the prevailing rate of rent of similar accommodation within 12 months preceding 1st day of December, 1980, which was cut-off-date for the purpose of enhancement of rent upon which increase of cost construction of building other incidental matter would be taken. The Court has given the reason for fixing the cut-off-date 1st December, 1980 on account of the Ordinance No. 63 of 1982 was promulgated with retrospective effect. Thereafter, the Act was passed which received the assent of President on 31st January, 1983 and was published in Bihar Extraordinary Gazette and it was deemed to have come in force from 1st April, 1981. It repealed the Ordinance of 1982 which was retrospective with a view to cover the period 1st December, 1980 was fixed cut-off-date. This is how, taking 1st December, 1980 as cut-off date mentioned in Section 8(1)(C) has been interpreted.

9. It will be relevant to quote paragraphs 13 to 15 of the aforesaid judgment:--

"Para 13-What Section 8(1)(c) postulates is broadly the factors to be taken into consideration while determining fair rent on an applicant for fixation of fair rent or for enhancement of the rent is filed by the landlord under Sections 5 and 6 of the Act. It has to be decided keeping in view that provisions of Rule 3(ii) of the Rules having due regard to the prevailing rate of rent in the locality for the similar accommodation and in similar circumstances at any time during 12 months preceding the date of order. But over and above that the rent may also be enhanced keeping in view increased cost of repairs the amenities provided and the compound or open land, type of construction and location of building etc.

Para 15. In the present case even though Section 8(1)(c) provides as to how the application for fair rent or its enhancement has to be decided. Broadly speaking it has to be decided, keeping in view the prevailing rate of rent in the locality for similar accommodation in similar circumstances. But primarily it has to be decided keeping in view the prevailing rate of rent of similar accommodation within 12 months preceding 1st day of December, 1980. which was cut-off-date for the purpose of enhancement of rent. For every cut-off-date there remains legislative intendment behind it. Why 1st December, 1980 was fixed the cutoff-date, the reason is that the Ordinance No. 63 of 1982 was promulgated with retrospective effect. Thereafter, the Act was passed which received the assent of President on 31st January, 1983 and was published in Bihar Extraordinary Gazette and it was deemed to have come in force from 1st April, 1981. It repealed the Ordinance of 1982 which was retrospective. With a view to cover the date before the Ordinance 1st December, 1980 was fixed the cut-off-date. This is how it has been provided under Section 8(1)(c) that the prevailing rate of rent in the locality during 12 months preceding the 1st day of December, 1980 shall be the guiding factor. But what the Proviso emphasises is that fair rate of rent shall be at a figure which shall not be less than the average monthly rent paid by a tenant for similar accommodation over 12 months period prior to 1st December, 1980. On this minimum fair rent the Proviso adds increase

of twenty five percent of the average monthly rent, on account of cost of repairs or the general increase in the cost of site etc. in this way the proviso has broadened the contours of the main provision of Section 8(1)(c). The provisions in the Proviso have to be treated as an integral part of the main provision. The provisions of Rule 3(ii)(a) to (g) also takes into account the provisions of the Proviso to Section 8. In our opinion the enhancement of rent under the impugned order cannot be said to be contrary to the provisions of Section 8(1)(c), including its proviso."

10. The similar issue has come up for consideration in Shree Bhagwati Hosiery Mills Private Limited case (supra) there also the Division Bench has considered the view taken in [Ram Adhin Singh Vs. The State of Bihar and others](#), (1993) 1 PLJR 637 and Saraswati Devi (supra) and held that the case of [Jainarayan Prasad Choudhary Vs. The State of Bihar and Others](#) is per incuriam and approved the view taken in Saraswati Devi's case (supra).

11. Dominant principle for deciding the fair rent is prevalent rate of rent of similar accommodation with similar facility in the surrounding area is the best method, as it would be very difficult to trace the fair rent of similar accommodation during 1980 and to find out increase cost of repair.

12. Looking to the guideline of the aforesaid judgment, this case has to be decided as to whether the Controller, Appellate Authority and the Revisional Authority acted in terms of the Act while fixing the fair rent of the premises. The Controlling Authority before fixing the fair rent has obtained enquiry report from the Executive Magistrate of the fair rent of the locality and taking clue from enquiry report fixed the fair rent of the demise premises.

13. It appears that the Appellate Authority reduced the rent to Rs. 14.000/-without consideration of any factor and without assigning reason therefore. The Revisional Authority further reduced the rent behaving as if he was deciding disputes of fixation of rent as trial court taking into consideration several factors for its consideration.

14. There is great difference in Appellate jurisdiction and Revisional jurisdiction. Appellate jurisdiction is continuation (sic- of?) trial and co-extensive to the power of trial court, but that is not so while exercising the revisional power. Appellate jurisdiction involves re-hearing on facts and law, the revisional jurisdiction though the part of appellate jurisdiction but cannot be equated with that of full-fledged appeal in consequence, revision is not continuation (sic-of?) suit or original proceeding. The Revisional Authority can interfere with the order of the appellate court when it is found to have committed illegality in applying the wrong principle so much so findings are not based on legal evidence or the findings recorded are perverse, in that situation, revisional authority or revisional court will have jurisdiction to interfere with order. This issue has been discussed in the recent judgment of [Hindustan Petroleum Corporation Ltd. Vs. Dilbahar Singh](#), (2014) AIRSCW 5018 : (2014) 9 SCALE 657 : (2014) 9 SCC 78 , relevant to quote paras 33 and 45 of the said judgment are as follows:--

"33. Insofar as the three-Judge Bench decision of this Court in Ram Dass is concerned, it rightly observes that revisional power is subject to well-known limitations inherent in all the revisional jurisdictions and the matter essentially turns on the language of the statute investing the jurisdiction. We do not think that there can ever be objection to the above statement. The controversy centres round the following observation in Ram Dass, "... that jurisdiction enables the court of revision, in appropriate cases, to examine the correctness of the findings of facts also...." It is suggested that by observing so, the three-Judge Bench in Ram Dass has enabled the High Court to interfere with the findings of fact by reappreciating the evidence. We do not think that the three-Judge Bench has gone to that extent in Ram Dass. The observation in Ram Dass that as the expression used conferring revisional jurisdiction is "legality and propriety", the High Court has wider jurisdiction obviously means that the power of revision vested in the High Court in the statute is wider than the power conferred on it under Section 115 of the Code of Civil Procedure; it is not confined to the jurisdictional error alone. However, in dealing with the findings of fact, the examination of findings of fact by the High Court is limited to satisfy itself that the decision is "according to law". This is expressly stated in Ram Dass. Whether or not a finding of fact recorded by the subordinate court/tribunal is according to law, is required to be seen on the touchstone whether such finding of fact is based on some legal evidence or it suffers from any illegality like misreading of the evidence or overlooking and ignoring the material evidence altogether or suffers from perversity or any such illegality or such finding has resulted in gross miscarriage of justice. Ram Dass does not lay down as a proposition of law that the revisional power of the High Court under the Rent Control Act is as wide as that of the appellate court or the appellate authority or such power is coextensive with that of the appellate authority or that the concluded finding of fact recorded by the original authority or the appellate authority can be interfered with by the High Court by reappreciating evidence because Revisional Court/authority is not in agreement with the finding of fact recorded by the court/authority below. Ram Dass does not exposit that the revisional power conferred upon the High Court is as wide as an appellate power to reappraise or reassess the evidence for coming to a different finding contrary to the finding recorded by the court/authority below. Rather, it emphasises that while examining the correctness of findings of fact, the Revisional Court is not the second court of first appeal. Ram Dass does not cross the limits of Revisional Court as explained in Dattonpant.

45. We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the first appellate court/first appellate authority because on reappreciation of the evidence, its view is different from the court/authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the court/authority below is according to law and does not suffer from any error of law. A finding of fact recorded by court/authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it

would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself as to the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to reappreciate or reassess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity."

15. The primary duty of the Revisional Court has to examine whether the court below while passing the order has committed an error of law and the finding are perverse rather adopting the wrong principle has misdirected himself and interfered with the order of the Appellate Authority reduced the fair rent of the premises to Rs. 8,500/- though it was tentative and later on, it was made final.

16. This Court is of the view that the manner the Appellate Authority and Revisional Authority wrongly acted and illegally decided the issue of fair rent of the premises not in the terms of Section 8(i)(c) of the B.B.C. Act. In such view of the matter, the order of the Appellate Court as well as the Revisional Court are hereby set aside and the matter is remanded back for consideration and passing the order in accordance with law. Accordingly, both the writ petitions are allowed.