

Sita Devi and ors. Vs. State of Bihar and ors.

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Court : Patna

Decided On : Oct-30-2002

Judge : Aftab Alam, J.

Appeal No. : C.W.J.C. No. 12067 of 2002

Appellant : Sita Devi and ors.

Respondent : State of Bihar and ors.

Disposition : Writ Petition Dismissed

Judgement :

Aftab Alam, J.

1. This writ petition arises from the petitioners' claim to receive the rent for the land and the building occupied by the Homeguards as tenant and it is filed against the order issued by the District Magistrate, Khagaria under his memo No. 2857/Confidential, dated 25.10.2000 (Annexure-8). By the impugned order, the District Magistrate directed the District Commandant of Homeguards, Khagaria not to pay the monthly rent of the tenanted premises to the petitioners but to continue payment of the rent to Respondent No. 5, as it was previously being paid to him.

2. The rent of the tenanted premises was being paid to Respondent No. 5 since 1982. And the fair rent of the premises had also been determined by the Sub-

divisional Officer, Khagaria in a proceeding instituted by Respondent No. 5.

3. Later, the petitioners got two sale-deeds executed in their favour on 16.5.1994 in respect of the tenanted premises from some persons who, according to the petitioners, were the lawful owners of the property. On the basis of the sale-deeds the petitioners got their names mutated in the revenue records and were also able to enter into an agreement with the District Commandant on 11.9.1999 for the payment of the rent of the premises to them @ Rs. 500 per month.

4. The payment of rent to Respondent No. 5 was, thus, stopped. He then filed a representation before the District Magistrate making a grievance with regard to stoppage of the payment of rent to him. On his representation the District Magistrate passed the impugned order after examining all the materials relating to the dispute.

5. Counsel for the petitioners submitted that the District Magistrate had no authority or competence to direct the District Commandant, Homeguards to pay the monthly rental of the premises to Respondent No. 5 and not to the petitioners. Learned Counsel submitted that Section 19(2) of the Bihar Buildings (Lease, Rent & Eviction) Control Act provided that the tenant may deposit rent in the prescribed manner in case a bona fide doubt or dispute arose as to the person who was entitled to receive the rent for the building. It was submitted that the District Magistrate overlooked the aforesaid provision of the Act and a prayer was made that this Court should direct the District Commandant, Homeguards to deposit the rent of the building before the House Controller and in that event the aggrieved party might seek appropriate reliefs as provided in law.

6. I am unable to accept the submissions and, in my view, it is misconceived to say that the District Magistrate had no authority or competence to direct for the payment of rent to Respondent No. 5 to whom the payment was being made previously. The letter of the District Magistrate addressed to the District Commandant of Homeguards is not to be viewed as a judicial or even a quasi-judicial order determining the right of the parties. The premises is rented out to the State Government which is in the position of a tenant. The District Magistrate, as head of the administration in the district, has the duty and obligation to ensure that

the rent of the tenanted premises is duly paid to the 'landlord' so that the State Government may not incur the liability of eviction for non-payment of rent. Further, since the District Magistrate representing the tenant has no doubt in his mind as to the person to whom the rent is to be paid, there is no question of giving any direction either to the District Magistrate or to the District Commandant of Homeguards in terms of the provision of Section 19(2) of the Act.

7. The prayer for a direction to the District Commandant to deposit the rent of the building before the House Controller and leaving the aggrieved party to seek appropriate reliefs is unacceptable to me for another reason. The prayer being made on behalf of the petitioners though seems to take the line of least resistance, it is actually a ploy to force Respondent No. 5, who presumably is the weaker party, either to go to the civil Court or to forgo his rights.

8. It is noted above that the rent of the tenanted premises was being received by Respondent No. 5 from 1982. The petitioners were admittedly not unaware of this position and yet they purchased the rented premises from persons other than Respondent No. 5. In the circumstances, without making any adverse comment on their claim of title, it plainly appears to this Court that the petitioners with their eyes open purchased a litigation. They must, therefore, travel the whole course and get their rights, title and interest in the disputed property, on the basis of the sale-deeds, properly upheld before a Court of law. Taking advantage of Section 19 of the Rent Control Act they want to bring about a situation where it would be Respondent No. 5 who may be compelled to go to the civil Court; that to my mind would not be fair, just and equitable. It is the petitioners who have purchased this litigation and it is they who must, therefore, go to the civil Court for a declaration and enforcement of their rights.

9. I, therefore, feel that in the facts and circumstances of this case it will not be a proper exercise of discretion to interfere in this matter. This writ petition is dismissed but with no order as to costs.