

Most. Jeera Devi Vs. State of Bihar and ors.

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Court : Patna

Decided On : Dec-18-2007

Judge : Navaniti Prasad Singh, J.

Appellant : Most. Jeera Devi

Respondent : State of Bihar and ors.

Judgement :

Navaniti Prasad Singh, J.

1. The premises of the petitioner was undisputedly occupied by the Respondent-State. The House Controller then fixed the rent that was required to be paid by the State i.e. the Department of Health through the Civil Surgeon, Patna. Notwithstanding the said determination and its communication to the State, no rent has been paid to the petitioner since the year 1999. It may be clarified here that though State was paying rent as originally tendered by them, the enhanced part of the rent is being paid by them. Apparently correspondences between the parties are carrying on since 1999. This writ application was filed in the year 2004. As no one appeared for the respondents, notices were issued to respondents. Notices were validly served. Respondent-State counsel accepted notice and took time in 2004 itself to file a counter-affidavit. No counter-affidavit was filed. When the matter was again taken up this year, again time was sought for but still no counter-affidavit has been filed. In my view, State being represented and having been

granted adequate time of three years to file counter-affidavit and none having been filed, this Court is of the opinion that there is nothing for the State to state against the pleadings as made in the writ petition

2. Mr. Shyam Kishore Sharma, learned State Counsel, raised objection regarding maintainability of the writ petition. He says that this is a matter of non-payment of rent for which the petitioner must go for civil suit. The submission is noticed only to be rejected. When the State says that there is no dispute then its liability to pay enhanced rent is admitted. Its liability being admitted and not discharging the same immediately would amount to an arbitrary act on the part of the State under Article 14 of the Constitution of India on the face of it. It is well established by a series of judgment including in the case of M/s. Hindustan Sugar Mills v. The State of Rajasthan reported in : AIR 1981 SC1681 wherein the Apex Court has clearly held in a matter arising out of contractual relationship that the State must do what is just and fair and should not take technical plea and force the citizens to civil litigation. In a democratic society such a negative plea by the State is impermissible

3. In that view of the matter, I allow the writ application with a direction to the Respondents including the Civil Surgeon, Patna, to ensure payment of full rent, as assessed by the Land Controller, to the petitioner for the past and continue to do so till the premises are occupied. The arrears of rent up-to-date would be paid within two months from the date of receipt/production of a copy of this order. In case, payment of arrears of rent is not made within the period as fixed above, the same must be paid with interest @ 10% on the total arrears of rent amount calculating from the date of payment till the due date and the same shall be charged by the State from the person responsible for inordinate delay.

4. With this observation and direction this writ application is disposed of.

Let a copy of this order be given to the learned State counsel.