
(2021) 03 JH CK 0146
In the Jharkhand High Court
Case No : Writ Petition(C) No. 955 Of 2021

Archana Chowdhary

APPELLANT

Vs

State of Jharkhand And Ors

RESPONDENT

Date of Decision : 18-03-2021

Acts Referred:

Jharkhand Municipal Act, 2011 — Section 437, 436, 437(1), 437(4)

Citation : (2021) 03 JH CK 0146

Hon'ble Judges : Rajesh Shankar, J

Bench : Single Bench

Advocate : Rajesh Kumar, Sunita Kumari, Prashant Kumar Singh

Final Decision : Disposed Of

Judgement

1. The present writ petition is taken up today through Video conferencing.

The petitioner, claiming herself to be the owner of the premises in question, has filed the present writ petition for quashing the order dated 11.02.2021 (Annexure-4 to the writ petition) passed by the respondent no. 2 - the Town Commissioner, Ranchi Municipal Corporation, Ranchi, whereby the leased premises namely, Mamta Restaurant has been directed to be sealed immediately under Section 437 of Jharkhand Municipal Act, 2011 (hereinafter referred to as "the Act, 2011") with further order to the Sealing Cell of Ranchi Municipal Corporation to inform the said respondent after sealing the premises in question. Further prayer has been made for issuance of direction upon the respondents to open the seal and restore the possession of the premises namely, Mamta Restaurant forthwith as the said sealing has been done illegally and in violation of the provisions of the Act, 2011.

2. The main submission of the learned counsel for the petitioner is that letter no. 209 dated 11.02.2021 issued under the signature of the respondent no. 3 - the Assistant Town Commissioner, Ranchi Municipal Corporation, Ranchi to Mamta Restaurant, Bansal Plaza (In front of Animal Hospital), H.B. Road, Ranchi was

delivered through speed post on 13.02.2021 at 15:14:40 hours. The said fact would be evident from the "track consignment" downloaded from the website of India Post (annexed as Annexure-5 series to the writ petition). However, even prior to delivery/service of the said notice/letter to the concerned restaurant, the respondent no. 2 ordered for sealing the premises on 11.02.2021 itself (copy of the said order has been annexed as Annexure-4 to the writ petition). The said action of the respondents is highly arbitrary and capricious as they did not even follow the mandate of Section 437(4) of the Act, 2011

3. Mr. Prashant Kumar Singh, the learned counsel for the respondent-RMC, while referring to paragraph-10 of the counter affidavit, submits that the construction work in Mamta Restaurant was being done in a building named as Bansal Plaza, Phase-2, Block F, H.B. Road, Ranchi running in the basement of the said building without obtaining sanction or permission from the competent authority or having any building plan. The petitioner was given several warnings by the "Enforcement Team" of Ranchi Municipal Corporation, Ranchi to immediately stop the construction work in the basement of the said building and to produce the sanctioned/approved map. However, despite repeated warnings, the petitioner continued to make construction in the said restaurant, which led to issuance of order dated 11.02.2021 by the respondent no. 2.

4. Heard the learned counsel for the petitioners and perused the materials available on record. It has been stated in the counter affidavit filed on behalf of the respondent-RMC that the "Enforcement Team" of Ranchi Municipal Corporation, Ranchi repeatedly warned the proprietor of Mamta Restaurant, however, ignoring the same, the construction of the said restaurant was continued. The said situation led to invoking of Section 437(4) of the Act, 2011 by the respondent no. 2. However, no such notice/letter has been annexed with the counter affidavit to suggest that any prior warning was given to the concerned restaurant to stop the construction work. Section 437(4) of the Act, 2011 clearly provides that if an order by the Municipal Commissioner or the Executive Officer under Section 436, or under Section 437(1), directing any person to stop the erection of any building or the execution of any work is not complied with, the Municipal Commissioner or the Executive Officer may take such measures as he deems fit or may require any police officer to remove such person and all his assistants and workmen from the premises within such time as may be specified by the Municipal Commissioner or the Executive Officer and the police officer shall comply with such requirements. The said provision thus manifests that there has to be an order by the Municipal Commissioner or the Executive Officer of the Municipal Corporation directing any person to stop the erection of any building or the execution of any work. If the said order/direction is not complied by the concerned person, a suitable measure is required to be taken so as to stop further construction as has been detailed in the said provision itself.

5. On perusal of the materials available on record, it appears that letter no. 209

dated 11.02.2021 issued under the signature of the respondent no. 3 was delivered to the addressee i.e., Mamta Restaurant on 13.02.2021. Thus, the order dated 11.02.2021 passed by the respondent no. 2 (i.e., prior to service of letter no. 209 dated 11.02.2021) directing sealing of the said restaurant does not conform to the requirement as mandated under Section 437(4) of the Act, 2011. Hence, the said order dated 11.02.2021 cannot be sustained in law. Thus, the same is quashed and set-aside.

6. Since U.C. Case No. 14/2021 is still pending before the respondent no. 2 in which the representative of Mamta Restaurant has already appeared as has been submitted by the learned counsel for the petitioner, no adjudication is required to be made in the present writ petition on the other issues. The respondent no. 2 is at liberty to take appropriate decision on the basis of the materials available on record in U.C. Case No. 14/2021 after providing due opportunity of hearing to the representative of the said restaurant. The respondents are directed to unseal Mamta Restaurant forthwith. It is, however, open to the respondent no. 2 to take appropriate steps in accordance with law for stopping further construction of the said restaurant during the pendency of U.C. Case No. 14/2021, if the situation so warrants.

7. The writ petition is accordingly disposed of with aforesaid observation and direction.