
(2012) 09 JH CK 0185
In the Jharkhand High Court
Case No : Writ Petition (C) No. 5101 of 2007

Bindeshwar Roy

APPELLANT

Vs

The Bihar State Road Transport Corporation and Others

RESPONDENT

Date of Decision : 19-09-2012

Acts Referred:

Citation : (2012) 09 JH CK 0185

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Mahesh Kumar Sinha, for the Appellant; P.P.N. Roy, for the Respondent

Judgement

Aparesh Kumar Singh

1. Heard learned counsel for the parties. The petitioner is challenging the issuance of notice contained at Annexure-8 dated 15th March, 2007, whereby he has been directed to make deposit amount of Rs. 69,223/- on account of arrear of rent up to February, 2007.

2. Learned counsel for the petitioner while drawing attention to this Court to Annexures: 1 & 2 i.e. the orders passed in C.W.J.C. No. 1548 of 2001 and L.P.A. No. 394 of 2001, in the case of the petitioner itself intends to submit that pursuant to the aforesaid orders the petitioner is regularly paying the rent. However, learned counsel for the petitioner also relied upon a judgment passed by this Court in W.P. (C) No. 6612 of 2004 dated 11th May, 2012 wherein it is submitted, that in similar circumstances this Court had directed the Respondents-Corporation (now Transport Department of the State of Jharkhand) to take a decision in relation to the allotment/settlement of shop and determination of rent by the Committee constituted by the Transport Department. It is submitted that the case of the petitioner stands on similar footing as he has been occupying in the said shop and paying rent regularly.

3. Learned counsel for the respondents, on the other hand, by referring to a

judgment passed in L.P.A. No. 879 of 2003 dated 18th October, 2011, in case of such allottees of the Respondents-Corporation (now Transport Department of the State of Jharkhand), submitted that the judgments referred to by the petitioner contained in Annexures: 1 & 2, have been taken into account by the Division Bench by directing the Respondent-Transport Department to take a decision in respect of fixation of reasonable and fair rent of such shops in respect of persons, who are already under allotment or also in cases where shops are open for re-allotment.

4. The relevant portion of the judgment in the aforesaid L.P.A. No. 879 of 2003 are quoted herein below:

Para 9: By the order dated 19.4.2001, the writ petition, C.W.J.C. No. 1548 of 2001, was, in fact, disposed of without deciding any issue of law and it has been observed that the petitioner shall deposit all the admitted rent of the shop in question, within one month from the date of the order and shall go on depositing the annual rent within the time, in terms of the agreement, failing which the settlement, made in favour of the petitioner, shall stand cancelled. Therefore, we do not think that the judgment relied upon by the counsel for the appellants has any bearing on the point and the appellants have no right to continue in the sit premises. For the reasons mentioned above, we do not find any just reason to interfere with the impugned judgment. As such this appeal is dismissed.

Para 10: We may observe here that the Transport Department has not acted in the manner in which it should have acted and as caused serious loss to the State exchequer in allowing the illegal occupants to continue in occupation for such a long period. Today also we have not been shown any policy of the Transport Department in the matter of allotment of any land or shop for the benefit of the tourists who may need some facility in the Bus-stand. We are also not sure whether the said Department, after evicting those occupants, wants to reallocate the shops and canteens to any other persons. The Transport Department need to take a decision and after taking a decision, if they decide to reallocate and make these shops available to the applicants, then priority is required to be given to the persons who were in occupation as has been suggested by the Transport Commissioner but it must be on a reasonable and fair rent so as not to cause any loss to the State exchequer in the matter where the appellants will also be getting benefit of continuation of their business for their earnings. Therefore, the Transport Department will be free to frame a policy and thereafter, take a decision in accordance with the policy and shall try to take a proper decision so as to give benefit to the passengers who come to the Bus-stand and shall not think only to oblige the traders and after taking a decision, they may reallocate the premises according to the policy for which we are not giving any other guidelines as it is for the Transport Department itself to take a decision. Since the shops presently have been sealed, the shops shall not be allotted to any other persons till the decision is taken by the Transport Department and after taking decision only, the respondent Department may proceed in accordance with law. Such

decision may be taken preferably within a period of two months so as to avoid any inconvenience to the occupants, if they are found to be entitled to reallotment of the land on any enhanced rent.

Para 11: We are making it clear that we are not observing that the shops should be kept as they are if, as per the decision of the Transport Department, shops are required to be demolished so as to construct new shops of standard size befitting to the present level of standard of the public, then these shops may be constructed of reasonable size but not of unreasonable size and thereafter they may proceed to take a decision for allotment to those very persons or to other persons according to their policy decision. In case, the Department takes a decision to demolish the shops, the appellant shall be given liberty to take their belongings without causing any damage to the property of any person.

5. In the circumstances, the Respondents-Corporation (now Transport Department of the State of Jharkhand), is directed to take a decision in respect of the determination of rent of shop of this petitioner as well within a period of two months as also whether the shop itself is required by the department to be continued in the larger public interest. This exercise should be completed within a period of two months from the date of receipt/production of a copy of this order where after the respondents department are directed to take steps for realizing the outstanding arrear against the petitioner within a period of two months, in accordance with law.

6. In the meantime, the respondents department will not take any coercive steps shall be taken against the petitioner. With the aforesaid observations/directions, this writ petition stands disposed of. Consequently, the LA. No. 1550 of 2012 also stands disposed of.