
(2015) 10 JH CK 0041
In the Jharkhand High Court
Case No : LPA No. 237 of 2014

Central Coalfields Ltd. and Others

APPELLANT

Vs

Govind Yadav

RESPONDENT

Date of Decision : 12-10-2015

Acts Referred:

Citation : (2015) 4 JLJR 562

Hon'ble Judges : Virender Singh, C.J. and P.P. Bhatt, J.

Bench : Division Bench

Advocate : Ananda Sen, for the Appellant; Atanu Banerjee, for the Respondent

Final Decision : Dismissed

Judgement

Virender Singh, C.J.

1. Challenge thrown herein is the judgment dated 10.3.2014 passed in W.P.C. No. 3859 of 2010* whereby the appellants are directed to construct three number of Katcha Houses at their own cost as per the specifications prescribed by Central Public Works Department or to the satisfaction of the petitioner on a suitable land of equal value to the land over which the damaged houses were situated and further pay cost of Rs. 50,000/-. The fact of the case in nutshell is that the respondent herein is the resident of Village-Bandh Basti, P.S.-Gomia, Kathara, Dist.-Bokaro and was having three numbers of kutchha houses and four number of pucca houses. Because of blasting in Kathara Colliery on 12.12.1986, house of the respondent damaged. The respondent, thereafter, claimed compensation/damage by filing a representation dt. 25.12.1986/28.12.1986 and an enquiry committee was constituted, who in turn submitted a report dt. 15.8.1988 giving a finding that walls of the houses of the respondent were totally cracked and further assessed the loss caused to the respondent to the tune of Rs. 59,99,228.88. In spite of the report of the committee, when the respondent was not paid compensation, he filed writ petition being W.P.(C) No. 2935 of 2008? and the same was dispose of on 10.9.2008 directing the appellants herein

to assess the amount of compensation to be paid to the respondent after giving him full opportunity of being heard. Pursuant to the order dt. 10.9.2008 a committee was constituted and it assessed the repair cost of the house to the tune of Rs. 10,550/- and vide letter dt. 8.12.2008 the respondent was directed to collect the same. Aggrieved with the order of the committee the respondent filed writ petition being W.P.(C) No. 3859 of 2010* and the same was allowed vide order dt. 10.3.2014 directing the respondents to construct four numbers of houses almost of same specification of the damaged houses as also three numbers of Kutcha houses at their own cost in accordance with model specification of the building construction prescribed by the Central Public Works Department or to the satisfaction of the petitioner on a suitable land of value equal to the land over which the damaged house were situated. Further a cost of Rs. 50,000/- was also imposed upon the appellants by observing that the respondent has to file writ petitions repeatedly due to the situation created by the respondents. Hence the present appeal filed.

2. Heard the learned counsel for the parties and perused the materials placed on record.

3. The learned counsel for the appellants, Mr. Ananda Sen, Adv. assailed the impugned order on the ground that since several disputed question of facts involve in this case the learned Single Judge could not have entertained the writ petition and at the best the respondent may be directed to move before the Civil Court for redressal of his grievances. It is further submitted that before ordering the construction of kutcha houses it was required to ascertain that the same was damaged because of blasting. It is further submitted that in earlier writ petition the learned writ court had directed the appellants to assess the damage of the respondent and pursuant thereto the damage was assessed and cheque was issued to the respondent but he refused to accept the same and as such there is no fault on the part of the appellants and the order as to payment of cost is bad. The learned counsel for the appellants further stated that the report dt. 15.8.1988 which was heavily relied upon by the learned Single Judge, is a forged/ manufactured document and as such the same cannot be acted upon.

4. Per contra, Mr. Atanu Banerjee, Adv. appearing on behalf of the respondent submitted that in spite of the report dt. 15.8.1988 the respondent moved from pillar to post for the compensation but the appellant did not paid any compensation and as such the learned Single Judge after recording all the facts ordered for construction of houses and also for payment of cost hence the impugned order does not suffers from any infirmity.

5. It appears that the appellants for the first time by filing a supplementary affidavit in the present appeal raised a new ground that the inspection report which has been heavily relied upon by the learned Single Judge is a forged document but at the same time unable to show any reason as to why such ground has not been taken by them at the time of hearing of both the earlier writ petitions. We are clearly of the view that it would not be proper for the appellate

court to allow such a new plea to be taken by the appellants in order to make out a new case. The respondent herein had no occasion to controvert this plea in the writ petition and also there was no finding recorded by the learned Single Judge in this regard. Thus, for these reasons we disallow this plea of forged document raised by the learned counsel for the appellants.

6. From perusal of the impugned order it appears that the learned Single Judge had given sufficient opportunity to the appellants to disclose about the basis of assessment of amount of damage to the tune of Rs. 10,550/- but it failed to disclose the same and as such the writ was heard on the basis of the documents available on record and finally the order for construction of the houses and for payment of cost has been passed and as such it does not suffers from any infirmity. However, looking to the fact that due to the inaction on the part of the appellants the respondent has been dragged repeatedly into the court, it is necessary to enhance the exemplary costs from Rs. 50,000/- to 1,00,000/- to ensure that the message goes in the right direction that petition filed by the State or its instrumentalities only to harass a private person, will never get the approval of the court. Ordered accordingly. The net result is that the appeal is dismissed with costs of Rs. 1,00,000/- (Rupees One Lakh).

*Ed.--: Reported in Govind Yadav Vs. C.C.L., .

?: Reported in 2008 (4) JLJR 338.