

(2014) 09 JH CK 0016
In the Jharkhand High Court
Case No : W.P.(C) No. 1350 of 2014

Century Foam Industries

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 03-09-2014

Acts Referred:

Citation : (2015) 1 JLJR 1

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : Sumeet Gadodia, Prem Pujari Roy, Anurag Kashyap and A.K. Mahto, Advocates for the Appellant; Saket Upadhyay, Advocates for the Respondent

Judgement

S. Chandrashekhar, J.—Aggrieved by orders dated 17.9.2013 and 24.1.2014 contained in Memo dated 27.1.2014, the petitioner has approached this Court. The learned counsel for the petitioner has submitted that without going into the factual matrix of the case, the writ petition deserves to be allowed on the ground that the petitioner has been rendered remediless in view of order passed on 24.1.2014. Assailing the said order dated 24.1.2014, the learned counsel for the petitioner has submitted that a bare perusal of the said order discloses that without hearing the petitioner, the said order has been passed. The petitioner would not have any grievance in so far as, the Secretary to the Government has declined to hear the appeal however, by directing the petitioner to approach the higher forum, the impugned order dated 24.1.2014 has taken away the statutory right conferred to the petitioner under Section 6(2-a) of the Bihar Industrial Area. Development Authority Act, 1974. The learned counsel for the petitioner has relied on a judgment reported in A.R. Antulay Vs. R.S. Nayak and Another, ,

2. Per contra, the learned Senior Counsel appearing for the respondent No. 3 has submitted that vide order dated 17.9.2013, it has been held that the petitioner has no locus standi to agitate the issue of cancellation of the allotment and therefore, even if the appeal preferred by the petitioner has been closed the petitioner has not suffered any irreparable loss and injury. It is further submitted

that a liberty has been given to the petitioner vide order dated 24.1.2014 to approach the higher forum and therefore, it was open to the petitioner to avail remedy as available to him in law.

3. Mr. Saket Upadhyay, the learned counsel appearing for the respondent Nos. 1 & 2 justified the order passed by the Secretary, Department of Industries and submitted that the principles of natural justice required that the respondent No. 2 should not have heard the appeal preferred by the petitioner and therefore, she has rightly declined to hear Appeal No. 18 of 2013.

4. Considering the facts and circumstances of the case as disclosed in the affidavits filed on behalf of the parties and particularly the impugned order dated 24.1.2014, I am of the opinion that by the impugned order dated 24.1.2014, a statutory right of appeal conferred on the petitioner under Section 6(2-a) of the Act has been taken away by the impugned order. It is well-settled that a right to appeal is a creation of statute which cannot be taken away even by the judicial order. In the facts of the case, I am of the considered opinion that the respondent No. 2 should have remitted the matter to the Government. The Act itself provides that the State Government is the appellate authority and it is stated by the counsel appearing for the parties at Bar that by a notification the State Government has designated Secretary, Department of Industries as the appellate authority. By directing the petitioner to approach the higher forum by the impugned order dated 24.1.2014, the respondent No. 2 has acted contrary to the established principles of law. The learned Senior counsel appearing for the respondent No. 3 on pointed query of the Court whether the respondent No. 3 has brought this situation to the notice of the State Government, has submitted that it was not the responsibility of the respondent No. 3 rather, the appellant himself was required to approach the State Government. The stand of the respondent No. 3 cannot be appreciated.

5. The appeal preferred by the petitioner being Appeal No. 18 of 2013 has to be heard by an Authority. The learned counsel appearing for the respondent Nos. 1 & 2 has submitted that this matter would be brought to the notice of the State Government and the State Government would take necessary decision in the matter. In the result, the impugned order dated 24.1.2014 is quashed and the matter is remitted back to the respondent No. 2 for taking necessary action in the matter to that the Appeal No. 18 of 2013 is placed before some other designated authority. Let such action be taken within a period of two weeks and necessary compliance report be filed in this Court. Since, the State Government has to designate appropriate authority in terms of Section 6(2-a) of the Act for hearing the appeal, in the extraordinary situation created in this case it is hereby directed that till the appeal of the petitioner is heard, there shall be an interim protection from dispossession.