
(2019) 12 JH CK 0246

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petitions No. 6844 Of 2019

Indu Bala @ Indu Devi

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 17-12-2019

Acts Referred:

Citation : (2019) 12 JH CK 0246

Hon'ble Judges : Rajesh Shankar, J

Bench : Single Bench

Advocate : Birendra Kumar, Vishwanath Roy, Vineet Prakash, Ranjeet Kumar

Final Decision : Dismissed

Judgement

1. The present writ petition has been filed for quashing the order as contained in memo no. 4924 dated 10.12.2019 (Annexure-7 to the writ petition)

passed by the Additional Municipal Commissioner, Municipal Corporation, Hazaribagh- respondent no.2, whereby the petitioner has been directed to

remove all her articles from the part of the land where Pucca construction has been made failing which the steps would be taken to remove the

encroachment in compliance of the order passed by this Court in W.P.(C) No. 7616 of 2017 and L.P.A. No. 568 of 2019.

2. Learned counsel for the petitioner submits that the impugned order as contained in memo no. 4924 dated 10.12.2019 passed by the respondent no. 2

is illegal particularly in view of observation of the learned Division Bench of this Court as contained in order dated 6.11.2019 passed in L.P.A. No. 568

of 2019 that since the communication dated 23.11.2017 was only by way of notice to the petitioner to show cause as to why she should not be

removed from the land in question for violation of the terms of the agreement, it

was for the petitioner to appear before the competent authority giving reasons for not removing her from the land in question. Since the learned Division Bench of this Court has considered the communication dated 23.11.2017 issued by the Executive Officer, Municipal Corporation, Hazaribagh to be a show cause notice only, the impugned order as contained in memo no. 4924 dated 10.12.2019 issued by the respondent no. 2 is arbitrary and liable to be set aside.

3. Learned counsel appearing on behalf of the State as well as the Municipal Corporation, Hazaribagh submit that the impugned order as contained in memo no. 4924 dated 10.12.2019 is completely justified as the same has been issued in compliance of the order of this Court passed in W.P.(C) No. 7616 of 2017 and L.P.A. No. 568 of 2019.

4. Heard learned counsel for the parties and perused the contents of the writ petition.

5. The petitioner had earlier filed a writ petition before this Court being W.P.(C) No. 7616 of 2017 challenging the communication dated 23.11.2017

issued by the Executive Officer, Municipal Corporation, Hazaribagh whereby the petitioner was directed to remove the "Pucca" construction

made over the land in question which was given to her for the purpose of "Gaushala". Vide order dated 30.07.2019, learned Single Bench of

this Court dismissed the said writ petition filed by the petitioner, the operative part of which reads as under:

"This Court after hearing the learned counsel appearing for the respective parties and looking to the nature of the reliefs sought for in

the instant writ petition, that pertains to quashing of the communication, issued under the signature of the Executive Officer, Municipal

Corporation, Hazaribagh on 23.11.2017, whereby and whereunder, the petitioner has been found to have made "Pucca" construction

over the land, which has been given to the petitioner for the purpose of "Gaushala", as it transpires from the stand taken by the

Respondents-Corporation in the counter affidavit that he now is using the said "Pucca" construction by subletting the same in favour

of the others for the purpose of earning money, therefore, if on that pretext, any notice has been issued by the competent authority of the

Municipal Corporation, Hazaribagh, as has been impugned in this writ petition,

the same cannot be said to be an illegal exercise by the concerned respondents, since the petitioner has failed to justify by not bringing any document on record any permission of the competent authority for the purpose of making construction over the land in question and the fact about the construction has been admitted by the petitioner, therefore, this Court is not inclined to interfere with the decision dated 23.11.2017 vide Memo No. 487, passed by the Executive Officer, Municipal Corporation, Hazaribagh, which has been impugned in this writ petition.

In view thereof, this writ petition fails and it is, accordingly, dismissed.â??

6. Aggrieved by the said order, the petitioner preferred L.P.A. No. 568 of 2019 and the learned Division Bench of this Court vide order dated

06.11.2019 dismissed the said L.P.A. making following observation:-

â??5. Be that as it may. Since the communication dated 23.11.2017 was only by way of notice to the petitioner to show- cause as to why she

should not be removed from the land in question, for violation of the terms of agreement, it was for the petitioner to appear before the

competent authority and to give her reasons for not removing her from the land in question. The petitioner did not do so, and had

approached this Court directly, and the Writ Court has also dismissed the writ application.

6. Since the petitioner has only challenged the notice before this Court, we do not find any illegality and/or irregularity in the impugned

order dated 30.07.2019, passed by the Writ Court in W.P.(C). No. 7616 of 2017, worth any interference in the L.P.A. jurisdiction.

7. There is no merit in this appeal and the same is accordingly dismissed.â??

7. The learned counsel for the petitioner has put reliance on the observation made by the learned Division Bench of this Court in paragraph-5 of the

order dated 06.11.2019 to the extent that the respondent-corporation was required to permit the petitioner to submit her show-cause and thereafter

should have taken appropriate decision. However, issuance of the impugned order as contained in memo no. 4924 dated 10.12.2019 straight away

directing the petitioner to remove the articles from the said part of the land where â??Puccaâ?? construction has been made, is unjustified and

arbitrary.

8. I find no force in the said submission of the learned counsel for the petitioner as it is evident from the said observation made by the learned Division

in paragraph-5 of the order dated 06.11.2019 that the petitioner had directly approached this Court without responding to the communication dated

23.11.2017. Moreover, the said L.P.A. was dismissed by the learned Division Bench having found no merit in the said appeal. Thus, the observation

made by the learned Single Judge in the order dated 30.07.2019 passed in W.P. (C) No. 7616 of 2017 that the impugned exercise made by the

respondent-corporation cannot be said to be illegal, still remains. On conjoint reading of orders passed in W.P.(C) No. 7616 of 2017 and L.P.A. No.

568 of 2019, it would be evident that the learned Division Bench of this Court has not modified any part of the order passed by the learned Single

Judge in W.P.(C) No. 7616 of 2017.

9. Under the aforesaid facts and circumstance, I find no illegality in the impugned order as contained in memo no. 4924 dated 10.12.2019 passed by

the respondent no.2.

10. The writ petition being devoid of merit is accordingly dismissed.