

(2012) 12 JH CK 0050
In the Jharkhand High Court
Case No : Writ Petition (C) No. 3473 of 2007

I.V.R. Moorti

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 13-12-2012

Acts Referred:

Citation : (2013) 3 JLJR 120

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Indrajit Sinha, for the Appellant;

Final Decision : Allowed

Judgement

Aparesh Kumar Singh, J.—Heard learned counsel for the petitioner. The petitioner has sought for quashing the order dated 30.08.2003 passed by learned Sub Divisional Magistrate, Dalbhum at Jamshedpur in Misc. (Information) Case No. 118 of 2003 whereby the Officer-in-Charge of the Sakchi Police Station was ordered to take possession of the shop in which the petitioner was tenant of the private respondent herein and also to take into custody the materials in the shop after preparing inventory. The petitioner has also sought direction upon the respondents to hand over all the materials taken in possession as per the inventory list prepared consequent to the order dated 30.08.2003 and also to put the petitioner back into possession. The petitioner has also prayed for compensation for illegally dispossessing him without taking recourse of law.

2. The brief facts of the case as per the petitioner are that the petitioner entered into an agreement for tenancy with respondent no. 5 for two shops in the year 1991. He came into possession of the two shops in question and thereafter a financial consultancy business was run in the name of M/S. Murti Finance and Investment Consultancy. For the aforesaid consultancy business, various articles like office furniture and valuable goods such as Computer system, Telephone, FAX machine etc. were kept therein. Sometime in the year 2002, the father of

the petitioner fell ill and for his treatment, he had to leave Jamshedpur after closing his business temporarily and putting the shops in question under lock and key. According to the petitioner, he never defaulted in payment of rent but the private respondent refused to take rent during the illness of his father. His father expired sometime in the year 2004 and he could not follow the business at Jamshedpur, which was ultimately wound up in August, 2006. However, to his surprise, he found that his shops were put under new lock and key and he had been dispossessed by the illegal acts committed by the respondents on the order passed in his absence by the Sub Divisional Officer, Dalbhum, at Jamshedpur dated 30.08.2003 which is impugned herein in Misc. (Information) Case No. 118 of 2003. According to the petitioner, from perusal of the order sheet of the Misc. (Information) Case No. 118 of 2003, it appears that respondent no. 5 had requested the S.D.O, Dalbhum, Jamshedpur to prepare inventory of the articles in the said shops and hand over the premises to him whereafter the impugned order has been passed. Thereafter the police took possession of the materials/articles in the shops and prepared inventory thereof and the shops have been put under lock and keys of the private respondent in presence of two witnesses. As per the order sheet itself, these actions have been taken without giving any notice and opportunity of hearing to the petitioner.

3. Learned counsel for the petitioner, therefore, has assailed the impugned action on the ground that it has been done in complete teeth of law laid down by the Hon"ble Supreme Court where he could not have been dispossessed in such summary manner without resort to the recourse of law as he was admittedly a tenant of the private respondent. Learned counsel for the petitioner has relied upon the judgment of the Hon"ble Supreme Court in the case of Rame Gowda (D) by Lrs. Vs. M. Varadappa Naidu (D) by Lrs. and Another, .

4. Learned counsel for the petitioner also submits that an order passed in such a proceeding without jurisdiction is nullity in the eye of law as the authority i.e. Sub Divisional Officer, Dalbhum, Jamshedpur did not have jurisdiction to entertain such an application in the nature of eviction proceedings at the behest of the private respondent which otherwise could only be maintainable before a competent Court of law under the relevant provisions of the Bihar Buildings Lease Rent and Eviction Act, 1982 (now adopted by Jharkhand). For the aforesaid purpose, he also relied upon the judgment of Hon"ble Supreme Court in the case of Deepak Agro Foods Vs. State of Rajasthan and Others, . Learned counsel for the petitioner has also relied upon the judgment of Hon"ble Supreme Court rendered in the case of Union Club, Dhanbad Vs. State of Jharkhand and others passed in Civil Appeal No. 6626 of 2012 by judgment dated 18.09.2012 in a case arising out of a writ petition decided by a Division Bench of this Court where the respondent authorities were directed to restore possession of the aggrieved petitioner in such circumstances. Accordingly, the petitioner has also justified his claim for compensation as having suffered on account of such illegal acts wholly without jurisdiction.

5. The respondent authorities have appeared. The private respondent had also appeared on notice but has not filed any counter affidavit in the present case nor is present to contest the case today and also for the last few dates.

6. Learned counsel for the respondents submits that separate affidavits have been filed on behalf of the Superintendent of Police, East Singhbhum, Sub Divisional Officer, Dalbhum, as also the Officer-in-Charge of Sakchi Police Station. The Superintendent of Police in his reply has defended the action of the Officer-in-Charge by submitting that he acted upon the orders of the Sub Divisional Officer, Dalbhum, Jamshedpur which was passed on the application of the private respondent in circumstances, when the petitioner was untraceable for a considerable length of time keeping the shops of the private respondent in question under the lock and key. It is further submitted that the Sub Divisional Officer, Dalbhum, Jamshedpur was presented with an application by the private respondent to take precipitate action for preparation of inventory of the articles inside the shops in question and also to hand over the possession of the same to the private respondent through the machinery of the local police in the presence of the witnesses. It further appears from the counter affidavit of the respondent no. 3 itself that they have also annexed the agreement of tenancy executed by the private respondent and this petitioner on 15.05.1992. Obviously, the application addressed to the S.D.O, Dalbhum, Jamshedpur, which has been annexed as Annexure-A to the said affidavit was based upon a supposed right in favour of the private respondent-landlord on the basis of the agreement of tenancy with the petitioner herein. The application at Annexure-A is addressed to the S.D.O, Dalbhum, Jamshedpur which was registered as Misc. (Information) Case No. 118 of 2003 and it was asserted therein that the monthly rent of the shop was Rs. 450.00/- only per month and the tenancy has not been renewed thereafter but the tenant-petitioner has been keeping away and the shops in question were kept under the lock, on account of which he sustained irreparable loss. Based upon these information, the private respondent had invoked the powers of Sub Divisional Officer, Dalbhum, Jamshedpur to take action. It is also stated by the counsel appearing on behalf of the respondents that the superintendent of Police, East Singhbhum, himself has stated that the materials which have been taken out in the presence of the witnesses from the shops in question were collected, an inventory was prepared and the same have been kept in the custody of the Inspector-cum- Officer-in-Charge, Sakchi Police Station. The petitioner can approach the Officer-in-Charge, Sakchi Police Station to obtain the articles in question claimed by him on proper identification.

7. I have heard learned counsel for the parties and gone through the relevant materials on record. The petitioner and the private respondent were admittedly under terms of an agreement for tenancy executed in the year 1992. As per the agreement annexed to the counter affidavit itself, from 1992, the petitioner came into possession of shops in question and continued thereafter. It appears that the petitioner had left the place of business for considerable length of time and, therefore, an apprehension arose in the minds of the private respondent that the

petitioner may not be interested in pursuing with the tenancy. However, the proper course for the landlord-owner of the premises would have been to institute an Eviction Suit before the competent Court of law under the relevant provisions of the Eviction Act in question, which operates within the territory of State of Jharkhand. Instead, the private respondent/owner approached the Sub Divisional Officer, Dalbhum, Jamshedpur by way of an application, which was registered as Misc.(Information) Case No. 118 of 2003 wherein without giving any opportunity to the petitioner, the Sub Divisional Officer proceeded to direct the Officer-in-Charge of the Sakchi, Police Station vide impugned order dated 30.08.2003 to take possession of the shops in question and to prepare inventory of the materials inside the shop and keep it in his custody. The consequent actions, thereafter, had been taken acting upon the said order of the Sub Divisional Officer, Dalbhum, Jamshedpur.

8. From the facts narrated hereinabove, it clearly appears that the action of the respondent Sub Divisional Officer, Dalbhum is wholly without jurisdiction as he was not the competent Court, where any proceeding for eviction of the premises could have been instituted. Even after a decree of a competent Court, the execution of the decree can be undertaken in an execution case on the writ of delivery of possession issued by the competent Court to be carried out with the help of the local police and the administration. Obviously, these facts are lacking in the present case. The order dated 30.08.2003, therefore, is wholly illegal and without jurisdiction. However, it appears that the shops itself have been taken in possession and handed over to the private respondent. The materials which have been collected therefrom, an inventory of which was prepared, are lying within the custody of the Officer-in-Charge, Sakchi Police Station. The petitioner will be at liberty to approach the Officer-in-Charge, Sakchi Police Station to collect the same on proper identification on any working day. For recovery of the possession of the premises in question, however, now it has already been delivered although in illegal manner to the private respondent, the petitioner may have to take recourse by due process of law by instituting a proper suit. However, since the order dated 30.08.2003 is wholly without jurisdiction, but has now been carried out, justice would be served if the respondent authorities of the State are directed to pay cost of Rs. 15,000.00/- to the petitioner on account of such illegal acts being wholly without jurisdiction on their part. The said cost would be payable by the respondents-State, which may be recovered from the erring officer concerned. The writ petition is accordingly allowed in the aforesaid terms.