

(2025) 03 JH CK 1374
In the Jharkhand High Court
Case No : W.P.(C) No. 578 Of 2022

Kurshid Alam @ Md. Kurshid Alam @ Md. Taukir	APPELLANT
Vs	
State Of Jharkhand	RESPONDENT

Date of Decision : 26-03-2025

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2025) 03 JH CK 1374

Hon'ble Judges : Deepak Roshan, J

Bench : Single Bench

Advocate : Arshad Hussain, Rahul Saboo, Gaurang Jajodia, Shubham Mishra

Final Decision : Dismissed

Judgement

Deepak Roshan, J

1. Heard learned counsel for the parties.
2. The instant writ petition has been preferred by the petitioner praying therein for quashing of the Letter bearing Memo No. 130(ii)/रा. dated 07/02/2022 (Annexure-6), issued by Circle Officer, Simdega, whereby the petitioner has been directed to vacate shop no. 89 situated in Simdega market complex.

Petitioner further prays for quashing the Letter No. 964(ii)/Vidhi dated 15.12.2021 (Annexure- 7) issued by Sub-Divisional Officer, Simdega; the very basis on which the aforesaid letter of Respondent no. 4 has been issued.

Petitioner has also prayed for quashing of the order passed by Sub-Divisional Officer, Simdega (Respondent No. 3) vide Memo No. 892 (ii)/रा. Simdega, dated 27.10.2014 (Annexure- 9) whereby the Shop No. 89 situated in Simdega Market Complex Simdega, was allotted to the Jagdish Gope (Respondent No. 5) after cancelling the previous allotment done to the petitioner as mentioned in Annexure-3 and Annexure-4 of the main writ petition.

3. This case has a checkered history. One Shop no. 89, situated at Simdega Market Complex, Simdega, Mouja-Simdega, was earlier allotted to the respondent no. 5 - Jagdish Gope; who thereafter sub-let the shop to the present petitioner.

Pursuant to the order passed by this Court in WP(C) No. 4859 of 2004 (Abdul Kalam vs. The State of Jharkhand & Ors.); agreement of Respondent no. 5 was cancelled and the shop was sealed. Thereafter, Respondent no.5 filed Writ application for restraining the auction.

The Petitioner had also filed writ application for allotment of shop in his favour. However, the writ application filed by the Petitioner was decided earlier than the writ application of respondent no. 5 and the petitioner was permitted to file his representation before Notified Area Committee. Thereafter, the petitioner made representation before the concerned respondent and the shop was allotted in his favour.

Subsequently, writ application filed by the respondent no. 5 was also decided on 05.07.2012; wherein respondents were directed to allow him to file representation for consideration of re-allotment of shops, if available, to the persons who were found to be needy.

Thereafter, respondent no. 5 made representation before the concerned respondent and pursuant thereto; after hearing both the parties, final order was passed by S.D.O. Simdega dated 27.10.2014; wherein petitioner's earlier allotment was cancelled and shop was allotted to the respondent no. 5 and thereafter, Circle Officer issued a letter dated 07.02.2015 wherein petitioner has been directed to be evict the shop in question by 22.02.2015.

Thereafter, petitioner assailed the eviction order in W.P.C. No. 586 of 2015 and this Court held vide its order dated 06.09.2019 that eviction order dated 07.02.2015 is the consequence of the order dated 27.10.2014 by which the shop in question has been allotted in favour of the respondent No. 5. This Court further directed the S.D.O. Simdega to restrain the respondent no. 5 from sub-letting the shop in favour of other. For brevity, relevant portion of the order dated 06.09.2019 in W.P.(S) No. 586 of 2015 is extracted herein below:

"19. This Court, therefore, is of the view that the order dated 07.02.2015 since is the consequence of the order dated 27.10.2014 by which the shop in question has been allotted in favour of the respondent No.5 even though the order of eviction dated 07.02.2015 would be interfered with, it will be of no avail.

21.....this Court deem it fit and proper to direct the Sub-Divisional Officer, Simdega to restrain the respondent No.5 in subletting the shop in favuor of other and in case of that eventuality, the allotment made in favour of the respondent No.5 shall be cancelled by following due procedure of law."

Thereafter, respondent no. 4 issued a letter dated 07.02.2022; wherein petitioner has been directed to vacate the shop. Hence, this writ application assailing

allotment of shop to respondent no. 5 as well his eviction order.

4. Learned counsel for the petitioner submits that in his earlier writ application being W.P.C. No. 586 of 2015 this Court held that as he has not prayed for quashing the allotment of respondent no. 5 and only prays for quashing for eviction order, therefore, he has filed this writ application. He further submits that pursuant to the order passed in writ application filed by respondent no. 5; the shop was allotted to him however, in that writ application of respondent no. 5 this Court held that there is no infirmity in the impugned order regarding cancellation of allotment of shop no. 89 by the authority against which respondent no. 5 has moved to this Court. However, liberty was given to respondent no. 5 to file a representation for consideration of re-allotment of shop if available to the person who are found to be needy.

He further submits that from perusal of the aforesaid order (Annexure-5) there are two important things, firstly, the court has held that cancellation of allotment of shop by the authority was legal and valid therefore Court did not interfere. Secondly, shop may be allotted to other needy person only when a shop is still vacant and if it has not been allotted to any other person. However, the said shop was already allotted to the petitioner and possession was already given to him as such allotment of shop to the respondent no. 5 was wrong and illegal; as such, liable to be quashed and set aside.

5. Learned counsel for the respondents relying upon its counter affidavit submits that the petitioner has suppressed key facts related to the allotment of the shop. Respondent no. 5 is indeed a needy person in terms of Abdul Kalam case (supra) as directed by this Court. When the representation from respondent no. 5 was received and the proceedings were started for allotment; special notice seeking show cause was served to the Petitioner as well as Respondent no. 5 in compliance of order dated 05.07.2012 passed in WP(C) No. 6315 of 2006.

During proceedings, it transpires to the Respondents that there is another shop being shop no. 130 which has already been allotted in the name of the biological brother of the petitioner and in view of the fact, the concerned respondent has rightly come to conclusion that the representation of the petitioner seeking allotment of shop no. 89 would be improper, unjust and against the rules; and accordingly, after hearing both the parties and also the fact that before allotment of shop no. 89 to the petitioner, notice was not served to the original allottee i.e., Respondent no. 5; passed final order dated 27.10.2014 wherein shop was allotted to respondent no. 5; as such, no relief should be granted to the Petitioner.

6. Learned Counsel for the Respondent no. 5 submits that in the writ application the petitioner has mentioned his name as Khurshid Alam @ Md. Taukir but as a matter of fact, Md. Taukir and the Petitioner are two different persons and the Petitioner has wrongly through alias has mentioned himself as Md. Taukir which is not correct and Md. Taukir who was illegally occupying the Shop No. 89,

moved before this Court in W.P.S. No. 1084/2010 which was disposed on 31.10.2011 with direction to S.D.O., Simdega to pass speaking order upon the representation and thereafter, S.D.O., Simdega on 21.04.2011 made allotment of Shop No. 89 to Khurshid Alam instead of Md. Taukir in spite of stay granted in favour of him vide order dated 27.11.2006 in W.P.C No. 6315 of 2006 and without serving any notice to him ; which is illegal as such Respondents have rightly allotted the shop to him pursuant to his representation.

7. Having heard learned counsel for the rival parties and after going through the documents annexed with the respective affidavits and the averments made therein it appears that Shop no. 89, situated at Simdega Market Complex, Simdega, Mouja Simdega, under Khata no. 172, plot no. 03/3131 was earlier allotted to the Respondent no.5 - Jagdish Gope who sub-let the shop to the petitioner.

Thereafter, pursuant to the order passed by this court in Abdul Kalam case (supra) enquiry was conducted and it was found that out of 220 shops altogether 25 shops were sub-let to different persons and thereafter these shops were sealed on 4th October, 2006.

8. Thereafter, respondent no. 5 moved before this court in W.P.C No. 6315 of 2006 for restraining the respondents from auction in which vide order dated 27.11.2006, stay was granted in favour of Respondent No. 5 that during the pendency, no coercive steps to be taken (Annexure B of Counter Affidavit of respondent no. 5) and the case was disposed of vide order dated 05.07.2012 by giving liberty to the Respondent no. 5 to file a representation for consideration of re-allotment of shop, if available, to the person who are found to be needy.

9. In the meantime, the Petitioner also filed writ application being W.P.C. No. 1084/2010 but order of his case came earlier than order in W.P.C. No. 6315/2006 filed by Respondent no. 5, i.e., on 31.01.2011. Thus, even after the order of stay in W.P.C. No. 6315/2006, without serving any notice to Respondent No. 5, shop No. 89 was allotted to the petitioner.

Thus, earlier allotment of shop to the Petitioner was in violation of principle of natural justice which can be summarized by latin maxim "audi alteram partem" as held by Hon'ble Apex Court in the case of D.K. Yadav v. J.M.A. Industries Ltd., (1993) 3 SCC 259 relevant para is quoted herein below: -

11. The law must therefore be now taken to be well-settled that procedure prescribed for depriving a person of livelihood must meet the challenge of Article 14 and such law would be liable to be tested on the anvil of Article 14 and the procedure prescribed by a statute or statutory rule or rules or orders affecting the civil rights or result in civil consequences would have to answer the requirement of Article 14. So it must be right, just and fair and not arbitrary, fanciful or oppressive. There can be no distinction between a quasi-judicial function and an administrative function for the purpose of principles of natural justice. The aim of both administrative inquiry as well as the quasi-judicial

inquiry is to arrive at a just decision and if a rule of natural justice is calculated to secure justice or to put it negatively, to prevent miscarriage of justice, it is difficult to see why it should be applicable only to quasi-judicial inquiry and not to administrative inquiry. It must logically apply to both.

10. On the other hand, the Respondent no. 5 filed the representation pursuant to the order of this Court in W.P.C. No. 6315/2006 before the respondent authorities and the proceedings took place regarding allotment after giving show cause notice to both the parties and after calling for record of Misc. Case No. 4/2006-07 in which both the parties have filed their show cause with their advocate and after hearing argument of their advocate and considering the grounds raised in their respective show cause, final order of allotment dated 27.10.2014 was passed by the S.D.O. Simdega; wherein earlier allotment of shop to the Petitioner was cancelled and it was allotted to Respondent no.5.

The relevant para of proceeding dated 27.10.2014 is quoted herein below:

11. By going through the aforesaid paragraph of proceedings, it is crystal clear that the order of allotment of shop in question to Respondent no. 5 was passed after following due process of natural justice and after considering the grounds raised and after hearing the arguments of their respective counsel. It is evident from the aforesaid order that for treatment of his mother in C.M.C. Vellore, Respondent no. 5 had given shop on rent and particularly in that circumstance, i.e., to save his mother's life the action of respondent no. 5 is justified and his intention was not to violate the terms and conditions of lease.

It is also evident from records that the Petitioner's brother namely, Md. Taukir has already been allotted a shop no.130; as such, it is not appropriate to allot another shop to another member of his family. As such, the shop was allotted to Respondent no. 5 as he is a needy and unemployed person. This Court does not find any error in the order passed in order dated 27.10.2014.

12. It is further evident from records that Petitioner thereafter, assailed only the eviction order dated 07.02.2015 in W.P.C. No. 586 of 2015; wherein petitioner has been directed to be evicted from shop by 22.02.2015 and this Court held vide order dated 06.09.2019 that eviction order dated 07.02.2015 is in consequence of the order dated 27.10.2014 by which the shop in question has been allotted in favour of the Respondent No. 5 and even otherwise also if the order of eviction dated 07.02.2015 would be interfered with, it will be of no avail and further this Court directed the S.D.O. Simdega to restrain the Respondent no. 5 in sub-letting the shop in favour of other.

However, the petitioner without filing any appeal against the order of this Court has simply filed civil review 22 of 2020 which was also dismissed for default.

13. Further, the Respondent no.4 issued a letter dated 07.02.2022 wherein Petitioner has been directed to vacate the shop. Thereafter, the petitioner filed the instant writ application to challenge the eviction order as well against the

allotment of shop to respondent no. 5.

It is essential to point out here that even after passing of order in the earlier writ application in the year 2019 wherein this Court gave its finding that no relief can be granted as he has not made prayer for cancellation of allotment of shop of Respondent no. 5 and without filing any appeal he simply filed Civil Review 22 of 2020 which was also dismissed for default; and again after waiting for about 2 and half years after the earlier disposal of his writ in the year 2019; and only when the fresh eviction order dated 07.02.2022 was issued by the Circle Officer, Simdega, then the petitioner moved before this Court for the said relief.

This type of laches on the part of Petitioner is not at all appreciated by this Court. The latin maxim "Vigilantibus Non Dormientibus Jura Subveniunt" i.e., the law assists only those who are vigilant, and not those who sleep over their rights correctly summarizes the effect of laches on behalf of the petitioner.

14. Having regards to the aforesaid discussions, this Court does not find any infirmity in the impugned orders; as such, no relief can be granted to the Petitioner. Accordingly, this writ application is dismissed. Pending I.As, if any stands closed. However, there shall be no order as to cost.