

(2002) 07 JH CK 0023

In the Jharkhand High Court

Case No : Letters Patent Appeal No's. 51 to 53 of 2000

Lata Soni and Another,

APPELLANT

Vs

Jamshedpur Notified Area Committee and Another

RESPONDENT

Date of Decision : 30-07-2002

Acts Referred:

Bihar and Orissa Municipal Act, 1922 — Section 194
Constitution of India, 1950 — Article 226

Citation : AIR 2003 Jhar 8

Hon'ble Judges : S.J. Mukhopadhaya, J;Lakshman Uraon, J

Bench : Division Bench

Advocate : Anil Kumar Sinha and Nilesh Kumar, for the Appellant; P.K. Prasad and S.L. Agarwal, (In LPA. Nos. 51 and 52/2000) and N.K. Prasad G.N. Chandra, S.K. Dwivedi and Manish Kumar, (In LPA. No. 53/2000), for the Respondent

Final Decision : Dismissed

Judgement

S. K. Mukhopadhaya, J. 1. As all the three appeals arise out of a common judgment dated 14th January, 2000, passed by the learned single Judge in C.W.J.C. Nos. 1757 of 1999(R), 1835 of 1999(R) and 1867 of 1999(R) reported in Nirmal Kumar Ghosh and Vs. Sub-Divisional Magistrate, Jamshedpur and Others, and common question of law is Involved in all of them, they have been heard together and are being disposed of by this common judgment.

All the writ petitions had been preferred by the tenants against the threat of demolition by Jamshedpur Notified Area Committee ("Committee" for short) u/s 194 of the Bihar and Orissa Municipal Act ("Municipal Act" for short) and for declaration that the threat of demolition of the tenanted premises by the Committee was absolutely illegal, arbitrary, mala fide and against the law. It was alleged that the action of threat for demolition was taken at the instance of Landlords (who are appellants here in these appeals) to evict the writ petitioners-tenants from the tenanted premises.

During pendency of the writ petitions, one of the tenanted premises of the

petitioner of C.W.J.C. No. 1867 of 1999(R), namely, Madhu Jha, was demolished.

The learned Single Judge by the impugned judgment dated 14th January, 2000, held that the action of the Committee either giving threat of demolition or demolishing one of the tenanted portion of the building is absolutely illegal, arbitrary and without Jurisdiction. The respondents of the writ petitions were restrained from demolishing the tenanted premises and evicting the tenants, namely, the writ petitioners Nirmal Kumar Ghosh of C.W.J.C. No. 1757 of 1999 (R) and M/s. Chagan Lal Dayal Jee of C.W.J.C. No. 1835 of 1999(R) with a further direction that in case the tenants have been evicted, to restore possession of the premises in their favour.

So far as writ petition of C.W.J.C. No. 1867 of 1999 (R), namely, Madhu Jha, is concerned, the respondents-appellants of L.P.A. No. 51 of 2000(K) were directed to put the said writ petitioner in possession of the premises from where she was forcibly dispossessed or to pay compensation of Rs. 50,000 (rupees fifty thousand) on account of her illegal dispossession.

2. The main questions arise for determination in these appeals are:

(a) Whether the action on the part of the respondent-Committee in the matter of demolition of buildings in question is illegal, arbitrary, mala fide and against the law or not and

(b) Whether the High Court has jurisdiction under Article 226 of the Constitution of India to restore possession of a premise or to grant compensation or not?

3- For determination of the issues, it is necessary to take into consideration the relevant facts, as mentioned hereunder:

L.P.A. No. 52 of 2000(R)

The writ petitioner-M/s. Chagan Lal Dayal Jee (C.W.J.C. No. 1835 of 1999R) was in occupation of a portion of the building premises of appellant Kanchan Ben Adesara (Landlord). The writ petitioner-Chagan Lal Dayal Jee was inducted as a tenant in a portion of the house by the erstwhile owner and landlord V.J. Pathak, which was subsequently purchased by Pasan Ben Adesara and appellant Kanchan Ben Adesara jointly vide sale deed dated 3rd March, 1987. Subsequently Pasan Ben Adesara executed a deed of relinquishment in favour of appellant Kanchan Ben Adesara vide registered deed dated 26th September, 1995.

The case of the tenant-M/s. Chagan Lal Dayal Jee was that the landlord-appellant, having become full owner of the building, started disturbing, in order to evict it (writ petitioner) from the premises. The landlord-appellant through her husband connived with the officers of the Committee to get the building demolished and to take possession of the demolished structure. On 9th July, 1999, the officers of the Committee came to the site along with 200 labourers and started demolishing the building. A portion of the roof of the writ petitioner's office was partially demolished that due to intervention of the Sub-Divisional

Magistrate, further demolition was stopped.

The stand of the Committee before the learned single Judge was that an order u/s 194 of the Municipal Act was passed on 2nd July, 1999 on the basis of which the order of demolition was carried on, after due notice and compliance of the legal provisions of the Municipal Act.

The landlord-appellant in her counter-affidavit, filed before the learned single Judge, stated, inter alia, that in the year, 1998. Senior Divisional Manager (Town Planning and Engineering), TISCO, Jamshedpur, examined the condition of the existing structure of Holding No. 3 and he, having found the same in a very unsafe condition, vide letter dated 20th August, 1998, directed the Vice-Chairman of the Committee to send a notice to the party to demolish the structure without any delay. The Committee, accordingly, after due inspection and submission of report on enquiry by the Assistant Engineer, Jamshedpur, sent notice dated 26th May, 1999 on her (appellant), directing therein, to get the premises vacated by 8th July, 1999 so that the building can be demolished. The Special Officer, thereafter, by order dated 2nd July, 1999 directed to vacate the building in question and in pursuance of the order, passed u/s 194 of the Municipal Act, the building was demolished in presence of a Magistrate on 8/9th August, 1999.

Further case of the landlord-appellant was that after demolition of the building, she entered into an agreement with Chandrakant Adersa, one of the tenants, whereby, it was agreed upon that after construction of the new building, a portion of the same shall be allotted to him.

L.P.A. No. 51 of 2000(R)

The case of the writ petitioner of C.W.J.C. No. 1867 of 1999(R), namely, Madhu Jha, was that she was inducted as a monthly tenant by the erstwhile owner, namely, Bhajan Singh Gumra, in respect of a portion of the building premises where she was carrying on business in the name and style of M/s. V-FOUR PUBLISHERS. The said owner Bhajan Singh Gumra sold the portion of his share to respondents Nos. 2 and 3 appellants vide sale deed dated 10th January, 1997. After the said transfer, the petitioner started paying rent to the husbands of the appellants, namely, Pawan Soni and Prabin Soni.

Further case of the writ petitioner was that she was carrying on the business of D.T.P., Computer Programming and Printing Press in the tenanted premises. On 8th July, 1999 at about 9.00 a.m., all of a sudden husbands of the respondents-appellants, without any prior information demolished the roof of the office, with the help of the employees of the Committee, on the ground that the building has become very dilapidated. With the help of the police force, her articles like computer, printing press and other articles were thrown away, out of the office of the respondents-appellants and possession of the premises was taken over. The writ petitioner reported the matter to the Superintendent of Police, Jamshedpur. but nothing was done. Later on, she could know that in a proceeding u/s 194 of

the Municipal Act, part of the premises was illegally demolished, to help the landlord to take possession of the same.

The landlords-appellants filed counter-affidavit before the learned single Judge. Their plea was that in a proceeding u/s 133 of the Code of Criminal Procedure, drawn up by the Sub-Divisional Magistrate, Dalbhum. being M. Case No. 274 of 1998, the Sub-Divisional Magistrate called for a report from the Special Officer of the Committee with regard to the condition of the building in question and it was then reported that the building is in a dilapidated condition. On the basis of such enquiry, made by the Committee, the Sub-Divisional Magistrate by order dated 10th June, 1999, dropped the proceeding u/s 133 of the Code of Criminal Procedure and directed the Committee to take suitable action under the relevant Section of the Municipal Act. On the basis of the aforesaid order, the Committee initiated a proceeding, issued notice u/s 194 of the Municipal Act and passed order for demolition of the building premises, in pursuance where of the building was demolished.

L. P. A. No. 53 of 2000(R)

The case of the writ petitioner of C.W.J.C. No. 1757 of 1999(R), namely, Nirmal Kumar Ghosh, is that he was a tenant in a portion of the building premises of landlord-Darshan Singh, who neglected to repair the premises in question for several years. The writ petitioner then filed an application on 10th November, 1995, before the House Controller, registered as H.R.C. Case No. 40 of 1995, for repair of the premises, which is a portion of the 1st Floor of the building. Thereafter, an enquiry was made by the Executive Magistrate, who recommended for immediate repair of the premises. The House Controller, accordingly, by order dated 26th July, 1996, directed the landlord-Darshan Singh for necessary repairs of the tenanted premises. Subsequently, the landlord-Darshan Singh, instead of making repair, filed an application on 25th May, 1997 in H.R.C. Case No. 40 of 1995, stating therein. that the building property in question has been transferred to one Sohan Sahgal and Lata Soni. Subsequently, respondent-appellant Prabin Kumar Soni claimed to be the husband of one of the purchasers. A proceeding u/s 107 of the Code of Criminal Procedure was initiated in order to put pressure on the writ petitioner for vacating the tenanted premises, which was ultimately quashed by the High Court in Cr. Revision No. 84 of 1998(R). The 5th respondent-appellant, thereafter, got a proceeding u/s 133 of the Code of Criminal Procedure initiated but it was dropped with an observation that the Committee may proceed under the Municipal Act. Subsequently, the writ petitioner came to know that the Committee had issued notice u/s 194 of the Municipal Act, in connivance with the landlord to demolish the tenanted parties of the building, with sole purpose to evict the tenant-writ petitioner. In the counter-affidavit before the learned single Judge. similar stand was taken by the Committee, which was not disputed by the appellant.

4. Learned Single Judge took into consideration that the writ petitioners, namely, Nirmal Kumar Ghosh of C.W.J.C. No. 1757 of 1999 (R) and Madhu Jha of C.W.J.C.

No. 1867 of 1999 (R), who are the tenants in respect of the same building under the erstwhile owner Darshan Singh who failed and neglected to repair the building for several years. One of the writ petitioners, namely. Nirmal Kumar Ghosh, filed application u/s 9 of the Bihar Buildings (Lease, Rent and Eviction) Control Act, on 10th Nov. 1995 for repair of the premises, which was registered as H.R.C. Case No. 40 of 1995. The House Rent Controller, on receipt of the report from the Executive Magistrate, recommended for immediate repair of the premises and passed order on 26th July, 1996 to repair the building premises by 19th August, 1996. In spite of such direction, for nine to ten months, the erstwhile owner Darshan Singh failed to repair the buildings premises and sold the building to one Sohan Sahgal and Lata Soni by registered sale deed dated 9th January, 1997 and 11th January, 1997. The husband of one of the purchasers put pressure on one of the writ petitioners to vacate the building, resulting in a proceeding u/s 107 of the Code of Criminal Procedure, which was ultimately quashed by this Court. In the proceeding u/s 133 of the Code of Criminal Procedure, the petitioner Nirmal Kumar Ghosh alleged mala fide, there being no question of public nuisance and as a tenant, he cannot be evicted by taking recourse of a proceeding u/s 133 of the Code of Criminal Procedure. Taking into consideration on the final order, passed by the Sub Divisional Magistrate, on 10th June, 1999, the learned single Judge formed opinion that the proceeding u/s 194 of the Municipal Act was initiated by the Committee only because of the order, passed by the Sub Divisional Magistrate in the proceeding u/s 133 of the Code of Criminal Procedure, which is not permissible in law. The relevant records were produced by the Committee from which it was detected that a notice was served on the petitioners by affixation and although the petitioner Nirmal Kumar Ghosh appeared on 31st May, 1999 and filed a petition for time for filing show cause, but the same was rejected as not maintainable. The Special Officer passed order of demolition of only that portion of the building, which was occupied by the writ petitioners-tenants. In the case of the writ petitioner M/s. Chagan Lal Dayal Jee. the learned Single Judge has found that the erstwhile owner gave notice to the petitioner to vacate the premises, in its occupation, on the ground that the building was in dilapidated condition, as has been directed by the Divisional Manager, TISCO, Jamshedpur and for reconstruction of the building. Thereafter, the landlord got a notice issued u/s 194 of the Municipal Act, on a so called public petition for demolition of the portion of the building, occupied by the writ petitioner-tenant.

In the aforesaid background, on appreciation of the material evidence and facts, learned Single Judge held that the order of demolition was passed at the instance of the landlords, for the purpose of eviction of the writ petitioners, who are in occupation of the premises as tenants.

5. From the judgment, passed by the learned Single Judge, it will be evident that the provisions of Section 194 of the Municipal Act was not followed. None of the owners or occupiers was directed to secure repair of the building or the structure or to demolish the same, as required u/s 194 of the Municipal Act. The direction,

given straightaway, to vacate the premises for its demolition by virtue of the notice was wholly without jurisdiction. The very purpose of the action having appeared to get vacant possession of the premises, by evicting the tenants and allowing the landlords to reconstruct the building has been rightly held to be mala fide in law by the learned single Judge.

It was also taken into consideration that none of the writ petitioners was called upon to show cause as to why he/she/it be not evicted from the premises to enable the owner of the building to get it demolished, because of its dilapidated condition, as required u/s 194 of the Municipal Act. The provisions of Section 360 of the Municipal Act was also not followed.

6. In these appeals also it is not in dispute that only the tenanted portions the buildings in question were demolished and not the rest one. In spite of interim order passed in one of the cases, the Committee demolished part of the tenanted portion-Thus, the first question, as raised, is answered in affirmative, action on the part of the landlords and Committee having rightly been held to be illegal, arbitrary, mala fide and against the law by the learned Single Judge.

7. The next question relates to the jurisdiction of the High Court under Article 226 of the Constitution of India to restore possession of the premises and grant of compensation.

The issue relating to grant of relief regarding restoration under a writ jurisdiction, fell for consideration before, a Bench of Patna High Court in the case of Smt. Labanya Ghosh v. State of Bihar, reported in 1983 BLT (Rep) 262. The Court held that the writ petitioners having been dispossessed by an illegal and void order by an authority, in an illegal manner, the possession of the land from which they were evicted, must be restored to them. The High Courts are entitled to mould the relief to meet the peculiar and complicated requirement of this country, governed by rule of law. In the said case, the Court restored the possession of the petitioners over the land under the writ jurisdiction.

Similar issue fell for consideration before the Patna High Court in the case of Smt. Indrawati Devi Vs. Bulu Ghosh and Others, wherein the Patna High Court held that the inherent power of the Court are meant to be exercised in such situations where nothing is more demoralising to a law abiding citizen than to be told by the Court that it is helpless in the matter of the affording him any protection even when his adversary has acted with impunity, contrary to all known legal procedures and that too after submitting to the Court's jurisdiction. To tolerate such an injustice would itself amount to perpetrating injustice in its most blatant form.

The Patna High Court in the case of Hindusthan Petroleum Corporation Ltd. Vs. The State of Bihar and Others granted relief of restoration of possession in a case under writ jurisdiction.

In another case of Smt. Manju Devi v. State of Bihar, reported in 1999 (2) PLJR

641 Bench of the Patna High Court, while discussing the power conferred under Article 226 of the Constitution of India, held that the rule of law is the very basis of the constitutional system, which cannot be sacrificed on any equitable consideration. Even for a defaulter tenant such mode cannot be allowed to evict him, defies the system of administration of justice under the laws of the land and such relief can be granted. In the said case the possession of the disputed shop was restored by the High Court in a case under Article 226 of the Constitution of India.

Similarly, in the case of Satya Narain Prasad v. State of Bihar, reported in 2000 (2) PLJR 36 the Patna High Court held that under Article 226 of the Constitution, although the writ Court does not interfere in a case of dispossession of an individual, but the Writ Court may interfere where the State/authority is involved, being accused of having forcibly evicted a person by taking advantage of his position.

8. In the case of Priya Brata Maity v. State of West Bengal, reported in AIR 2000 Cal 32, the Court took into account certain actions taken by the Municipal authorities under the Municipal Act, in spite of injunction order passed by the learned Civil Court, and against the provisions of law. The Court held that action to be illegal and held that the statutory authority must exercise its jurisdiction within four corners of the State. In a case where an order has been passed in violation of the order of injunction, the High Court can bring the parties to the same position in exercise of its inherent jurisdiction as if the order of injunction had not been violated. The Court can take notice of the subsequent events and mould reliefs with a view to shorter litigation.

The Court further held that the right to a shutter being protected under Article 21 of the Constitution of India, a person illegally deprived of therefrom is entitled to be compensated in view of the doctrine of "Constitutional tort". In the said case, the action on the part of the Municipal authorities was held to have suffered from the views of both malice of fact and malice of law.

9. Somewhat similar case fell for consideration before the Supreme Court in the case of Samir Sobhan Sanyal Vs. Tracks Trade Pvt. Ltd. and others, That was a case where the appellant was evicted without any decree or order of eviction, unlawfully and without any due process of law. The Apex Court held that since the letter of the law should strictly be adhered to high handed action of the party in having the appellant of the said case dispossessed without due process of law, cannot be overlooked nor condoned. The Court cannot blink at their unlawful conduct to dispossess the person from the demised property and would say that the status quo be maintained. If the Court gives acceptance to such high handed action, there will be no respect for rule of law and unlawful elements would be taken hold of the due process of law for ransom and it would be a field day for anarchy. Due process of law would be put to ridicule in the estimate of the law-abiding citizens and rule of law would remain a mortuary. In the said case, the respondents were directed to put the appellant in possession within 24 hours.

In the case of S.R. Ejaz Vs. The Tamil Nadu Handloom Weavers Co-operative Society Ltd., the Supreme Court taking into consideration the plaintiff appellant's possession and subsequent forcible dispossession, with the help of workers and local police, without any order of competent Court, having been established, imposed cost of Rs. 50,000/- on the respondents of the said case.

10. From the referred above, it is evident that in a case where an order has been passed in violation of order of any Court or action on the part of the statutory authorities suffers from the views of malice of fact or malice of law the High Court can grant relief of restoration of possession and/or compensation/cost in appropriate cases under Article 226 of the Constitution of India. The second question is accordingly, answered in affirmative and against the appellants.

11. In the present appeals I have agreed with the findings of the learned Single Judge that the writ petitioners were forcibly evicted by officials of the Jamshedpur Notified Area Committee, arbitrarily, without following the procedure of law and at the instance of landlord. As such, the High Court having power under Article 226 of the Constitution of India to restore possession and /or to grant compensation cost. I find no reason to interfere with the common judgment dated 14th January, 2000, passed by the learned Single Judge. Accordingly, there being no merit in the appeals, they are hereby dismissed, but without any order as to costs.

Lakshman Uraon, J. 12. I agree.