
(2016) 05 RAJ CK 0088
In the Rajasthan High Court
Case No : Civil Writ Petition No. 8143 of 2014

Lokesh Kumar

APPELLANT

Vs

State of Rajasthan & Ors.

RESPONDENT

Date of Decision : 24-05-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 3 DNJ 1156

Hon'ble Judges : Mr. Arun Bhansali, J.

Bench : Single Bench

Advocate : Mr. Nitin Trivedi, Advocate, for the Appellant; Mr. Sunil Joshi for Mr. Rajesh Panwar, Advocates, for the Respondent

Final Decision : Allowed

Judgement

Mr. Arun Bhansali, J.—This writ petition has been filed by the petitioner aggrieved against impugned notices dated 12.06.2014 (Annexure-4) and 24/25.06.2013 (Annexure-5), whereby, the shop of the petitioner has been seized without serving any notice or providing opportunity of hearing to the petitioner.

2. It is submitted by learned counsel for the petitioner that in all there were 28 such shops similar to that of petitioner, to whom, the notices were issued and the shops were seized; 27 shop keepers/tenants approached this Court by filing writ petition along with Trust and the writ petition filed by the tenants and the Trust was disposed of by this Court in Hari Ballabh Baheti Charitable Trust & Anr. v. State of Rajasthan & Ors., S.B. Civil Writ Petition No. 7410/2013, decided on 25.10.2013, whereby, inter alia, qua the tenants, the following direction was issued:-

"24. The other writ petitions filed by tenants of the petitioner Trust also sail in the same boat. They cannot have any better right or interest than their landlord i.e. the petitioner Trust. However, since in the impugned order the learned

District Collector has stated that possession of the property is being taken only to ensure that the property continues to be used for public purposes only and which order has been upheld by this Court and the property in question was seized by the District Collector in pursuance of the said order, the running business of the shops of the other petitioners other than the petitioner Trust does not deserve to be stopped for the time being, since no useful purpose will be served in stopping day-to-day business activities by sealing the shops in question also. Therefore, to the extent of property other than shops, the learned District Collector would be free to ensure the user of the said property for public purposes as a "Sarai" in terms of the conditions of the Patta. The rentals of these shops would be deposited by all the petitioners-tenants henceforth with the District Collector, Bhilwara, since the possession of the entire property has been taken over in pursuance of the impugned order dated 24/6/2013 by the District Collector, Bhilwara. The District Collector, Bhilwara will be free to appoint a Committee comprising of himself, one Asstt. Collector & one representative of the petitioner Trust or the family to manage the day to day affairs of the said "Sarai" (Dharamshala) & shops so that commercial use of the property as a marriage place/Vatika can be checked & restricted. The rentals of shops will be used only for good maintenance & up-keep of the said property to be used only as a "Sarai" (Dharamshala) as originally intended in the "Bapi Patta" (Annex.1 & 2)."

3. It is prayed that so far as the petitioner is concerned, as he is similarly situated to the other tenants, a similar direction may be issued.

4. Learned counsel for the State points out that against the order dated 25.10.2013 (supra) a special appeal was filed being D.B. Civil Special Appeal No. 1233/2013, Hari Ballabh Baheti Memorial Charitable Trust, Bhilwara & Anr. v. The State of Raj. & Anr., decided on 29.07.2015, wherein, the Division Bench has, inter alia, directed as under:-

"8. Without going into the merits of the case, we deem it appropriate to remand the case back to the District Collector for taking appropriate decision after hearing the appellants-petitioners concerned. Undoubtedly, the appellants-petitioners have been in possession of the premises as far back as 1942 when a Patta was issued in favour of Hari Ballabh Bagtawarmal. Sealing and closure of the Dharamshala without giving an adequate opportunity of hearing to the appellants-petitioners and without taking into consideration reply filed, is against the principles of natural justice. Adequate opportunity ought to have been granted to the appellants-petitioners to present its case before sealing of the property. The principles of natural justice have clearly been violated by the respondents in so far as there has been no consideration of the reply sent. We deem it appropriate to direct the District Collector to re-hear the matter after giving notice and full opportunity of hearing to the appellants-petitioners to defend and present its case. Needful be done within a period of three months from receipt of certified copy of this order.

9. The appeal is disposed with the above directions, while setting aside the judgment of the Single Bench."

5. A perusal of the order/judgment passed by the learned Single Judge as well as the Division Bench reveals that while the writ petition filed by the Trust was dismissed by learned Single Judge, the sealing of the shops of the tenants was directed to be removed with further direction regarding payment of rent and its user. The Division Bench came to the conclusion that sealing and closure of the Dharamshala without giving an adequate opportunity of hearing to the Trust and without taking into consideration reply filed, was against the principles of natural justice and directed for rehearing of the matter after giving notice and full opportunity of hearing to the Trust and the order of the learned Single Judge was set aside.

6. In view of the directions given by the Division Bench, wherein, the action of the respondent State has been held to be against the principles of natural justice and the fact that pursuant to the judgment of the learned Single Judge all the 27 shops have been desealed by the respondents, to the extent of prayer made by the petitioner for removing the seizure of his shop being similarly situated to 27 tenants is concerned, the petitioner is entitled to the said relief, as qua the said direction given by the learned Single Judge, no observations have been made and in so far as the desealing is concerned the same appears to be the natural consequence of the judgment of the Division Bench as well.

7. In view of the above discussion, the writ petition filed by the petitioner is allowed and the respondents are directed to remove the seizure of petitioner's shop and treat him equally with the other 27 tenants of the property. Needful may be done by the respondents within a period of two weeks from the date certified copy of the order is placed before the respondents.