
(2009) 03 JH CK 0014
In the Jharkhand High Court

Md. Abid Hussain

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 05-03-2009

Acts Referred:

Bihar Government Premises (Rent, Recovery and Eviction) Act, 1956 — Section 3, 4

Citation : (2009) 2 JCR 365

Hon'ble Judges : Ajit Kumar Sinha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ajit Kumar Sinha, J.—The present writ petition has been preferred for issuance of a writ of or in the nature of certiorari or for any other appropriate writ, order or direction for quashing the impugned notice as contained in Memo No. 4(1)/Ra. Dated 4.10.2006 (Annexure-4) issued by the Sub Divisional Officer, Simdega (Respondent No. 3) whereby and whereunder the Respondent No. 3 has cancelled the allotment of Shop No. 115 situated at Mouza-Simdega under Khata No. 172, Plot No. 3/3131 allotted to the petitioner by the Additional Collector, Simdega by its order dated 10.9.2003 which was duly approved by the Deputy Commissioner, Simdega and evicted the petitioner from the shop premises and further direction upon the respondents No. 5 to accept the rent and execute agreement of the premises in view of the order passed by the Additional Collector, Simdega on 10.9.2003 in Misc. Case No. 22/2003-04.

2. The facts in brief are stated as under:

That Shop No. 115 was initially allotted to Nilam Raza and an agreement was executed. Nilam Raza violated the terms and conditions of the agreement for which a proceeding was initiated against him by the learned Additional Collector, Simdega on 11.8.2003 and his allotment was cancelled vide order dated 10.9.2003 and the said Shop No. 115 was allotted to the petitioner subsequently on 20.2.2004 by the Deputy Commissioner, Simdega subject to certain terms

and conditions as mentioned in the order dated 10.9.2003. The petitioner failed to fulfill the terms and conditions and thus, he could not be allotted the said Shop No. 115 and the same was accordingly cancelled.

3. Some of the allottee/tenants had sublet the shop to other persons which led to filing a writ petition before this Hon"ble Court being W.P.(C) No. 4859 of 2004 and an order was passed on 7.7.2006 by this Court with the following observations:

The sub Divisional Magistrate is direct to personally make an enquiry and issue notices to all those persons who have been running the shops either on the basis of sub-lessee or on the basis of purchaser. All those persons who are illegally occupying the shops and running the business shall be noticed to show cause and after giving reasonable opportunity of hearing, get the shops vacated to be re-allotted to the needy persons who shall be evicted. This exercise must be completed within a period of six months from today.

4. In the light of the aforesaid, the respondent no 4 issued a notice to Nilam Raza vide Misc. No. 19/06 on 3.7.2006 to file show cause and accordingly on 18.7.2006 he appeared but without filing any show cause. As per the previous enquiry it was found that the original allottee Nilam Raza violated the terms and conditions at para-13 of the agreement by subletting it to Mel. Mumtaz Alam, S/o Abdul Rauf who was own brother of the petitioner. However, respondent No. 3 again conducted a detailed enquiry and found that Nilam Raza had sublet It and violated the terms and conditions of the agreement and accordingly agreement was cancelled on 18.9.2006.

5. The petitioner preferred a representation on 22.9.2006 demanding the entire enquiry report which was furnished to him and It was specifically stated vide Memo No. 774(B)(ii) Rev. dated 27.9.2006 stating Inter alia that the petitioner Md. Abid Hussain failed to fulfill any terms and conditions till date for the said shop premises No. 115 and accordingly recommended to cancel it as per direction issued by Deputy Commissioner, Simdega. Accordingly, the same was cancelled by the respondent No. 3 on 4.10.2006 after hearing the petitioner and giving sufficient opportunity and also in accordance with order and direction dated 7.7.2006 passed by this Hon"ble court in W.P.(C) No. 48159 of 2004. The shop premises in question has already been vacated and sealed by the respondent No. 3.

6. The main contention raised by the petitioner is that the Impugned notice dated 4.10.2006 was totally Illegal, arbitrary and vitiated due to non compliance of the principle of natural justice. It has also been submitted by the learned Counsel for the petitioner namely, Mr. Ajit Kumar, that the entire action was in violation of provision of Sections 3 & 4 of Bihar Government premises (Rent & Eviction) Act, 1956. It has further been submitted that the petitioner was always ready to deposit the rent but agreement was not executed.

7. I have considered the arguments and submission and find that the stage was

not even of an agreement or contract but only a stage of Invitation to an offer and thus, the same could not be enforced by Issuance of a writ of mandamus. Even otherwise the prayer to issue a Writ of mandamus to accept rent and execute agreement in absence of any legal, accrued or vested right is not maintainable. The petitioner has not even reached the stage of being called either a tenant and or an allottee since he failed to fulfill the terms and conditions of the allotment. Even otherwise the respondent No. 3 issued proper notice and gave opportunity to the petitioner and after thorough enquiry and report submitted by C.O., Simdega cancelled the allotment. Thus there was full compliance of natural Justice. The argument with regard to violation of Section 3 and 4 of Bihar Government Premises (Rent & Eviction) Act is also thus unsustainable.

8. Considering the facts and circumstances of the case, this writ petition being devoid of any merit and also being not maintainable is accordingly dismissed.