

(2019) 09 JH CK 0063

In the Jharkhand High Court

Case No : Writ Petition (c) No. 3137 Of 2017

Md. Rafique Ahmad

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 23-09-2019

Acts Referred:

Jharkhand Agriculture Produce Markets Act, 2000 — Section 3, 4
Constitution Of India, 1950 — Article 226

Citation : (2019) 09 JH CK 0063

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

Advocate : Nivedita Kundu, Dr. Ashok Kumar Singh

Final Decision : Dismissed

Judgement

1. This writ petition has been filed under Article 226 of the Constitution of India whereby and whereunder letter dated 20.01.2017 has been sought to be quashed by which the claim of the petitioner for allotment of shop by way of rehabilitation as per the order passed by this Court in W.P.(C) No. 6075 of 2003 has been shown to be not permissible.

2. The brief fact of the case of the petitioner as per the pleading is that a shop is said to have been allotted in favour of the petitioner on the monthly rent of Rs.50/-sometime in the year 1991 and since then the petitioner is in occupation of the said shop. The petitioner was compelled to approach this Court by filing writ petition W.P.(C) No. 6075 of 2003 against the demolition of the shops and a coordinate Bench of this Court while disposing of the writ petition vide order dated 13.11.2006 has passed an order to consider the desirability of rehabilitating the petitioner at some other place on the fresh terms and conditions fixed by him. In pursuance thereof, decision has been taken by directing the petitioner to vacate the premises with a further direction to make payment of Rs.3,34,140.00 to be paid within 15 days against which the present writ petition has been filed inter alia on the ground that since there is an order

for allotment of the shop and in furtherance thereof this Court has also directed to consider the desirability of rehabilitation, but the consideration cannot be said to be in right perspective since the petitioner has been asked to vacate the premises with a direction to make payment of the amount to which the petitioner is liable to make payment by way of monthly rental of the said premises and therefore, the action of the authorities is nothing but an arbitrary exercise to evict the petitioner from the premises which is nothing but to deprive him from the right to livelihood.

3. Learned counsel for the petitioner has submitted that the quantum of the amount as has been casted as a liability upon the petitioner is also in dispute since before assessing the said amount the petitioner has not been heard.

4. Counter affidavit has been filed by the respondents, by putting reliance on the same Dr. Ashok Kumar Singh, learned counsel appearing for the Khunti Agriculture Produce Market Committee, by referring to the provisions of Section 3 and 4 of the Jharkhand Agriculture Produce Markets Act, 2000, has submitted that shops have been constructed in the yard for the purpose of using it for the marketing of the agricultural produce and in no circumstances the shops can be allotted for the purpose of repairing of tyre and as such the authority while considering the case of the petitioner for rehabilitation in terms of the order passed by this Court, has come out with the decision as contained in letter No. 11 dated 09.01.2017 whereby and whereunder consideration about the grievance of the petitioner has been made but the authorities have come to the finding by passing an order about having no scope to allot the shop for the purpose of tyre repair and as such, the petitioner has got no legal vested right to get the shop allotted in his favour.

5. A rejoinder to the said counter affidavit has been filed by the petitioner wherein the fact which has been averred in the writ petition has been reiterated.

6. After having heard the learned counsel for the parties and on appreciation of the rival submissions, the fact which is not in dispute in this case is that the petitioner has come in occupation of the shop situated in the premises of the Khunti Agriculture Produce Market Committee sometime in the year 1991. Admittedly, there is no allotment order of the shop however, as would appear from Annexure-1 there is a note of the Vice Chairman of the Ranchi Regional Development Authority making reference of the allotment of the said shop and perhaps on the basis of that the petitioner is claiming allotment of the shop in his favour.

7. The authorities have come out for demolition of some parts of the shops situated in the premises which led the petitioner along with one Kishore Kumar Gupta to file the writ petition being W.P.(C) No. 6075 of 2003. However, this Court has not interfered with the issue of demolition but directed for consideration about the desirability of rehabilitating the petitioner at some other place on the fresh terms and conditions fixed by him, as would appear from

Annexure-3 annexed to the writ petition. It further appears from the communication made by the Marketing Secretary, Agriculture Produce Market Committee, Khunti dated 14.08.2007 by which the steps have been taken in order to consider the issue of rehabilitation of the petitioner but ultimately the decision has been taken by the authority on 09.01.2017 as would appear from Annexure-6 appended to the writ petition whereby and whereunder the authorities have shown their inability to provide a shop by way of rehabilitation to the petitioner. In consequence thereto, further decision has been taken on 20.01.2017 by which the petitioner has been directed to vacate the premises with a further direction to make payment of Rs.3,34,140.00 failing which further action would be taken for which the petitioner shall be responsible.

8. The petitioner has approached this Court by way of present writ petition against the order dated 20.01.2017. The petitioner is not entitled for relief under Article 226 of the Constitution of India, under which the present writ petition has been filed, for following reasons :-

(i) The petitioner has not produced any valid order of allotment issued by the competent authority in view of the power conferred under the Jharkhand Agriculture Produce Markets Act, 2000, rather, the petitioner is claiming his right on the basis of a note endorsed in his representation which is said to have been made by the Vice Chairman of the Ranchi Regional Development Authority. Admittedly, the Vice Chairman, Ranchi Regional Development Authority is not the competent authority to look into the affairs of the Bihar Agriculture Marketing Board since the Ranchi Regional Development Authority and the Bihar Agriculture Marketing Board are creation of two different statutes with different powers with the different authorities and therefore, the allotment said to have been made by the Vice Chairman of the Ranchi Regional Development Authority cannot be said to be valid conferring right upon the petitioner for re-allotment of the shop.

(ii) This Court has passed an order in W.P.(C) No. 6075 of 2003 which has been preferred by the petitioner along with one another namely Kishore Kumar Gupta against the demolition drive of their shops. This Court has not interfered with the said demolition drive, however, directed for consideration about the desirability of rehabilitating the petitioner at some other place on the fresh terms and conditions.

In pursuant to the aforesaid order, steps have been taken by the Marketing Secretary, Agriculture Produce Market Committee, Khunti as would appear from letter dated 14.08.2007 (Annexure-4 Page 26 to the brief) to look into the rehabilitation part of the petitioner so that the petitioner may be able to survive himself and the other family members but ultimately decision has been taken by the Marketing Secretary of the Agriculture Produce Market Committee, Khunti on 09.01.2017 showing its inability to provide any shop for rehabilitation of the petitioner by making an observation that the competent authority for this purpose would be Sub Divisional Officer, Khunti.

The Marketing Secretary, Agriculture Produce Market Committee, Khunti in consequence to the decision taken on 09.01.2017, has come out with another decision on 20.01.2017 as contained in letter No. 37 (Annexure-7) directing the petitioner to vacate the premises with a further direction upon him to make payment of Rs.3,34,140.00.

(iii) The fact remains herein that in absence of any valid allotment order, there cannot be any order of allotment by the writ court sitting under Article 226 of the Constitution of India for the reason that writ court is supposed to issue appropriate writ if the petitioner has got any legal vested right and in the present case the legal vested right would only accrue if there will be any valid order of allotment issued by the appropriate authority but in absence of any legal vested right there cannot be any direction by the writ court. The writ court is a court of equity but court of equity does not mean that the writ court would transgress its power by passing a direction even though there is no legal vested right.

(iv) An order has been passed by this Court in W.P.(C) No. 6075 of 2003 but that also does not confer any right upon the petitioner because there is no specific direction for allotting the shop and that cannot be done in absence of any legal vested right and therefore the coordinate Bench of this Court while disposing of the aforesaid writ petition has directed the Sub Divisional Officer to consider the desirability of rehabilitating the petitioner at some other place. Consideration means that the decision may go either way, either positive or negative depending upon the fact and the legal position and while considering the case of the petitioner the authorities have taken decision showing no scope of rehabilitation and as such the consideration of the case of the petitioner has duly been made but in absence of any scope, the same has been decided against the petitioner vide decision taken on 09.01.2017.

(v) One another fact also needs to be referred that the petitioner has challenged the order dated 20.01.2017 by which the petitioner has been directed to vacate the premises with a direction to make payment of Rs.3,34,140.00 which is to be paid by the petitioner against the rental of the said shop but very surprisingly the decision taken by the authority as contained in letter No.11 dated 09.01.2017 has not been challenged.

The decision taken on 20.01.2017 is nothing but consequence of the decision dated 09.01.2017 and so long as the original order by way of foundation is available, even if the consequence will go it is of no avail for the petitioner.

9. This Court, in the entirety of the facts and circumstances, therefore, is of the view that the petitioner has failed to make out a case for passing a positive direction showing interference by this Court by issuing writ of certiorari. Accordingly, the writ petition fails and is dismissed.

10. At this juncture, learned counsel for the petitioner has submitted that the amount of Rs.3,34,140.00 shown to be paid by way of monthly rental has been arbitrarily fixed.

11. This Court, after considering the aforesaid submission and also with the consent of the learned counsel appearing for Khunti Agriculture Produce Market Committee, is of the view that the said fact is required to be agitated before the competent authority for its consideration if the petitioner will approach by making an objection, the concerned competent authority, after providing opportunity, will pass an speaking order reflecting the admissible fixed rate.