
(2001) 01 PAT CK 0028

In the Patna High Court

Case No : C.W.J.C. Nos. 9505, 9612 and 9539 of 1999

Mohd. Tahir, etc. etc.

APPELLANT

Vs

State of Bihar and Others etc.

RESPONDENT

Date of Decision : 12-01-2001

Acts Referred:

Citation : (2001) 01 PAT CK 0028

Final Decision : Allowed

Judgement

Narayan Roy, J.—All these three writ applications have been heard together as common questions of law and facts are involved and they are being disposed of by this common order.

2. Heard Mr. Parmeshwar Prasad, Learned Counsel for the petitioners and Mr. Ram Balak Mahto, learned Senior Counsel appearing on behalf of respondent No. 3 to 5.

3. The order as contained in Annexure-4 in each of the writ applications, passed by the Sub-Divisional Magistrate, Bhagalpur in purported exercise of his power u/s 4 of the Bihar Government Premises (Rent Recovery and Eviction) Act, 1956 (hereinafter referred to as the "Act"), are under challenge.

4. The main thrust of argument of learned Counsel for the petitioners is that the Sub-Divisional Magistrate has no jurisdiction to pass the order impugned as the shop premises of the petitioners are the properties of Bihar Agriculture Produce Market Committee, Bhagalpur. It is further submitted that the shop premises were settled to the petitioners by the Market Committee and prescribed fees, etc. being paid from time to time and without any rhyme and reason notices were served upon them for legal action as they defaulted in payment of rental and they kept the premises locked. It is further submitted that after due notice miscellaneous cases were initiated against the petitioners and final orders were passed u/s 4 of the Act directing the petitioners to vacate the shop premises allotted to them within three days of the notice. Question raised by the learned

Counsel for the petitioners, however, is not being disputed by the learned Counsel for the respondents. However, it is submitted that the orders passed by the Sub-Divisional Magistrate may be treated as orders passed by his ex officio Chairman of the said Market Committee. The orders as contained in Annexure-4 perse show that these are the orders passed in exercise of powers u/s 4 of the Act by Sub-Divisional Magistrate who is said to be the competent authority under the Act.

5. In support of the proposition, learned Counsel for the petitioners has placed reliance on the case of Chandrikaprasad Mishra Vs. Shree Babulnath Mandir Charities and another, A Bench of this Court in the case of Amrit Varsha Hindi Dainik (supra) held that the premises owned by Bihar State Agriculture Marketing Board do not come under the definition of Government Premises and therefore, the extended meaning of instrumentality of the State are not applicable on the definition of Government premises under the Act and it is only applicable to premises owned by the State Government and, therefore, the orders passed by Sub-Divisional Magistrate was wholly without jurisdiction.

6. In the cases at hand, the facts are identical and at the same time, the question of law raised by the petitioners is not being disputed by the other side. In that view of the matter, the ratio laid down in the case of Amrit Varsha (supra) is applicable in the facts and circumstances of these cases.

7. For the reasons aforementioned, these applications are allowed and the orders as contained in Annexure-4 in each of the writ applications are quashed. The respondents concerned are directed to restore back the possession of these petitioners in case they have been evicted. However, the respondents concerned shall be at liberty to proceed afresh in accordance with the law. No order as to costs.