
(2003) 03 PAT CK 0093
In the Patna High Court
Case No : C.W.J.C. No. 3034 of 2000

Nazareth Academy

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 10-03-2003

Acts Referred:

Bihar Tenancy Act, 1885 — Section 23, 23(2), 23(4)

Citation : (2003) 2 PLJR 509

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Aftab Alam, J.—Nazareth Academy Society is a Society registered under the Societies Registration Act, 1860. The Society has set up a school at Gaya under the name of Nazareth Academy. The school being represented by its Principal Sister Reena Theruvan is the Petitioner before this Court.

2. The school building and the grounds are situate on plot Nos. 197 and 198 under Khata Nos. 128 and 114 respectively. The total area of the two plots is shown as 2.74 acres. The revenue authorities, in purported exercise of powers u/s 23(4) of the Bihar Tenancy Act, 1885, have fixed the annual rent of the two plots at Rs. 1,64,400/- on the plea that the land was not being used for agricultural purposes but was used for running a private school for the past about twenty years.

3. The Petitioner seeks to challenge the proceedings of Commercial Rent Case No. 6 of 1999-2000 in which the annual rent at the enhanced rate was fixed by order, dated 2.12.1999. Following that order a demand notice, dated 8.3.2000 was also issued to the Petitioner directing it to pay the sum of Rs. 9,86,400/-, being the annual rent of the land for the previous five years and the current year at the enhanced rate. The order fixing the enhanced rent of the land at commercial rates and the consequential demand notice is assailed on the ground

that on admitted facts Section 23(4) of the Act had no application and the initiation of the proceeding and the orders passed therein were, therefore, completely unauthorised and without jurisdiction.

4. The proceeding u/s 23(4) of the Act was initiated on the basis of a notice issued by the Circle Officer, Gaya on 3.7.1989. In this notice, it was stated that the land was being used for the purpose of a school. In response to the notice, the Petitioner filed its show cause in which it was stated that on the land in question the Society was running an educational institution for religious and charitable purposes and hence, the notice issued u/s 23(4) of the Act was quite unwarranted and uncalled for. From the orders passed in the proceeding, it appears that though it was repeatedly noticed that the land in question was being used for the purpose of a school, the show cause filed by the Petitioner was found to be without any substance and accordingly, the commercial rent of the land was fixed at Rs. 1,64,4000/- annually.

5. Mr. K.M. Joseph, counsel appearing for the Petitioner submitted that the provision of Sub-section (4) of Section 23 would apply only in case the raiyat used his land for any purpose not enumerated in Sub-section (2) of Section 23 and in Clause (c) of Sub-section (2) of Section 23 educational purpose was expressly stated as one of the permissible user of the land. Therefore, on the admitted fact that the land of the two plots was used for the purpose of school as stated in the notice itself, the provision of Section 23(4) would not be attracted and there would be no question of fixing commercial rent for the land.

6. The submission of Mr. Joseph has substance. Section 23 of the Act deals with the rights of a raiyat in respect of use of land and provides that a raiyat "may use the land in any manner which does not materially impair the value of the land and render it unfit for the purposes of the tenancy except as provided in Sub-section (4)". Sub-section (4) which was inserted by an amendment in the Act made in 1993 has the following as the opening sentence.

A raiyat may with the previous permission of the Collector, use his land for the purposes not enumerated in Sub-section (2),

7. Then Sub-section (2) enumerates purposes which are deemed not to impair the value of the land materially. Sub-section (2) of Section 23 reads as follows:

(2) The following shall not be deemed to impair the value of the land materially or to render it unfit for the purposes of the tenancy.

(a) The manufacture of bricks and tiles for the domestic or agriculture purposes of the raiyat and his family or for any educational or charitable purpose;

(b) the excavation of tanks or the digging of wells intended to provide a supply of water for drinking or other domestic purposes of the raiyat and his family or to any religious or charitable institution, and

(c) the erection of building for the domestic or agricultural purposes of the raiyat

and his family or for any educational or charitable purpose." (emphasis added)

8. Educational purpose is thus expressly stated as one of the permissible uses which would be deemed not to Impair the value of the land. It is, therefore, evident that admittedly the Petitioner is not putting the land to any use not enumerated in Sub-section (2) of Section 23 and there would be, therefore, no question of any application of Sub-section (4) of Section 23. The contention must, therefore, be upheld that on admitted fact the Initiation of the proceeding was without jurisdiction and consequently all orders passed in that proceeding and the demand notice issued on that basis must fall to the ground.

9. The proceedings of Commercial Rent Case No. 6 of 1999-2000 and the demand notice, dated 8.3.2000 are accordingly quashed. In the result, this writ petition is allowed but with no order as to costs.