
(2003) 10 JH CK 0025

In the Jharkhand High Court

Case No : Writ Petition (C) No. 1751 of 2003

Phiroz Nariman Kutar and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 15-10-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 52 BLJR 70 : (2004) 1 JCR 314

Hon'ble Judges : P.K. Balasubramanyan, C.J;R.K. Merathia, J

Bench : Division Bench

Advocate : Binod Poddar and Ajay Poddar, for the Appellant; B.S. Lall, Addl. A.G. for respondent Nos. 1 to 3, M.M. Prasad and G.M. Mishra, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Balasubramanyan, C.J.—The petitioners have approached this Court praying for a writ of certiorari to quash the order dated 21.2.2003, marked as Annexure-10, passed by the Deputy Commissioner. East Singhbhum, Jamshedpur on the basis of the direction issued by this Court to pass a speaking order in WP (C) No. 88 of 2002. By that order, the Deputy Commissioner has restrained the petitioners from continuing the construction of a new building in place of the old building situated in Holding Nos. 9 and 10. Earlier, the Deputy Commissioner had directed the stopping of the construction by notice dated 17.4.2002. It was then that the writ petitioners filed the writ petition, W.P. (c) No. 88 of 2002 questioning that notice and this Court directed that the petitioners be heard and an order passed. It was thereafter that the present order impugned was passed by the Deputy Commissioner.

2. The property was a part of the property that was held by the Tata Iron and Steel Company Limited (TISCO) on lease under the Government. The TISCO had sub-leased the land in question to one Phiroz Kutar on 13.12.1962; it was for a term of thirty years. On the death of Phiroz Kutar in the year 1969, the sub-leasehold devolved on Mrs. Khorshed Phiroz Kutar. On 30.10.1985, according to

the petitioners, Mrs. Khorshed Phiroz Kutar applied to the TISCO to add the name of her grand sons Phiroz Nariman Kutar and her nephew Behram Aibara also as joint lessees with her. According to the petitioners, that request was accepted by the TISCO. Subsequently, Mrs, Khorshed Phiroz Kutar died and it is claimed that the lease hold stood in the joint names of her grand son and nephew as sub lessees in the records of TISCO. The term of thirty years expired on 13.12.1992. On 28.2.1995, TISCO renewed the sub lease with writ petitioners 1 and 2 till 31.12.1995, This was for the reason that the lease in favour of the TISCO itself was to expire by that date. After the period of the lease in favour of the TISCO expired on 31.12.1995, disputes cropped up between the State and the TISCO regarding the renewal of the lease. The dispute is still pending and is the subject matter of a contempt of Court proceedings in this Court. Thus, as on today, there is no subsisting lease in favour of the TISCO in respect of the entire extent of which the property in question forms a part.

3. When this writ petition came up we suggested to counsel for the petitioners that it will be better if this writ petition is taken up and disposed of after the question of renewal of the lease in favour of the TISCO is settled, one way or the other in the pending proceedings or by negotiation, between the parties. In fact, it was submitted to us that negotiations have reached an advanced stage and what remains is only to strike the actual bargain and to work out some details in respect of the rights and the obligations. But the learned counsel for the petitioners insisted that even without the lease in favour of the TISCO being renewed, the petitioners have a right to have the impugned order set aside and since one of the petitioners is 73 years old, the petitioners would request the Court to decide the question on the facts, as they now exist and de hors the question of renewal of the lease in favour of the TISCO by the Government. It was in that context that we have taken up the case, heard the same and are disposing of the same finally.

4. We find that the term of the lease of TISCO has expired. The question of renewal of that lease is pending. No doubt, the provisions of the Bihar Land Reforms Act may have application. On behalf of the petitioners, Section 7E of the Act was referred to as protecting sub-lessees. But then, that stand of the petitioners is questioned seriously by the learned Additional Advocate General who appears for the respondents. What ever it be, we do not think that it would be proper for us to pronounce on these aspects at this stage. Suffice it to say that the question whether the petitioners are entitled to have a renewal of the sub-lease, and whether they are entitled to alter the character of the land and whether they are entitled to put up a new construction according to their volition are questions that have to be considered. What the Deputy Commissioner has now done by the impugned order is only to direct the petitioners to maintain the status quo until the question of renewal of the lease between the State Government and TISCO is finally decided and the rights and obligations of TISCO are crystallized. In other words, whether in respect of the land under sub-lessee, TISCO would be in a position to renew the sub-lease, would also be a question

that may depend upon the terms of the ultimate settlement arrived at between the State Government and TISCO or on the terms of the renewal of the lease granted by the State Government to TISCO (of course, the concept of lease was only a fiction created on the coming into force of the Bihar Land Reforms Act).

5. Incidentally, we may notice that the permission, Annexure-3 granted by the Notified Area Committee, Jamshedpur for constructing a multi-storeyed building in the property was only subject to the no objection from the local revenue authorities. The petitioners were, therefore, bound to get the permission from the local revenue authorities before starting the construction. It is seen that the petitioners did not get that permission and it was in that context that the notice, Annexure-1 dated 17.4.2002 was issued to one of the petitioners calling upon them to stop the construction until permission is obtained. It was on receipt of this notice that the petitioners approached this Court with Writ Petition, W.P. (C) No. 88 of 2003 and this Court by Annexure-8 order, directed the Deputy Commissioner, East Singhbhum to take into consideration the relevant documents and the plan produced by the petitioners and decide whether the petitioners should be permitted to construct a new building over the holding Nos. 9/10 or not, within three weeks from the date of production of a copy of the order in the writ petition. It was also directed that if an adverse decision was taken, the Deputy Commissioner should communicate the grounds of the decision to the petitioners within a time fixed. It was pursuant to that direction that the petitioners were heard by the Deputy Commissioner and the impugned order, Annexure-10 was passed.

6. All that the Deputy Commissioner has now done is that he has prevented the petitioners from carrying on the construction without permission of the local revenue authorities pointing out that the revenue authorities were not in a position to grant permission in view of the fact that the whole question of the renewal of the case in favour of TISCO was pending consideration with the State Government. The reasons given in Annexure-10, *prima facie*, cannot be said to be unreasonable or improper and they do support the direction not to go ahead with the construction until further orders. As we have already noticed, the petitioners have not obtained a no objection from the local revenue authority. The Deputy Commissioner is also right in pointing out that the question of renewal of the lease of the Schedule IV lands was pending consideration. Terms had also to be settled in case the lease in favour of TISCO was to be renewed. There was also a question whether the petitioners had acquired any right over the sub-leasehold and whether they were entitled to alter the nature of the building or to put up a commercial one. It is significant to notice, as pointed out by the learned Additional Advocate General, that the petitioners have not produced either the sanctioned plan of the relevant documents to show the nature of the construction proposed to be made. Any revenue authority entrusted with the task of protecting the interests of the State could not but have intervened and directed the petitioners to stop the construction until a final decision on the question of renewal of the lease in favour of the TISCO was

taken. The argument that the Deputy Commissioner has acted without jurisdiction is seen to be unsustainable in view of the fact that the Deputy Commissioner was always entitled to point out that the petitioners have not obtained a no objection from the local revenue authority, when the building permission itself was granted subject to no objection from the local revenue authority. As an authority bound to protect the interests of the State, the Deputy Commissioner was also entitled to direct the petitioners not to go on with the construction or alter the status quo leading to the arising of claims pending renewal of the original lease in favour of TISCO. Moreover, in this case, the petitioners had approached this Court and obtained a writ of mandamus from this Court directing the Deputy Commissioner to hear them and to take a decision. Therefore, the petitioners cannot now come up with a contention that the Deputy Commissioner had acted without jurisdiction. In any event, we see no justification for holding that the Deputy Commissioner had no jurisdiction to pass the order, Annexure-10.

7. On the face of it, the order, Annexure-10, is only an interim order restraining the petitioners from carrying on the construction without obtaining a no objection from the revenue authority and pending finalization of the renewal of the lease by the Government in favour of TISCO under whom the petitioners claim to be sub-lessees. We are satisfied that the said order should continue in operation until the question of renewal of the lease by the State in favour of TISCO is finalized and the terms thereof are settled. Obviously, thereafter, it will be open to the petitioners to move the Deputy Commissioner for an appropriate modification or variation of the order by establishing their rights and claims under law and on the basis of the renewal of the lease in favour of TISCO. In this situation, we are satisfied that no interference is called for at this stage. Though the fact, that one of the petitioners is 73 years old, may entitle the petitioners to have this writ petition heard early, that does not by itself entitle the petitioners to relief when it is seen that otherwise they are not entitled to relief at this stage. We dismiss the writ petition subject to the above liberty given to the petitioners.

R.K. Merathia, J.

8. I agree.