
(2018) 04 JH CK 0045

In the Jharkhand High Court

Case No : W.P.(C) No. 5965 of 2010 With I.A. No. 7144 of 2013

PRAKASH RATNA JHA

APPELLANT

Vs

M/S HEAVY ENGINEERING CORPORATION LTD

RESPONDENT

Date of Decision : 02-04-2018

Acts Referred:

Citation : (2018) 04 JH CK 0045

Hon'ble Judges : ANUBHA RAWAT CHOUDHARY, J

Bench : Single Bench

Advocate : A.K. Sahani, Gaurav Baibhav

Final Decision : Dismissed

Judgement

1. Heard Mr. A.K. Sahani, counsel appearing for the petitioner.
2. Heard Mr. Gaurav Baibhav, counsel appearing for the respondents.
3. This writ petition has been filed by the petitioner for the following reliefs:-
 - a. For quashing the letter bearing No. TA/ Est /2010-288 dated 13.08.2010 (Annexure-8) whereby and whereunder the respondent no. 4 purported to have regretted the claim of the Petitioner for allotments of Quarter No. B-2662/2 on long term lease on extraneous ground and for a direction upon the respondents for allotment of the aforesaid quarter being Quarter No. B-2662/2 on Long Term Lease on extraneous ground.
 - b. For issuance of a writ or in the nature of mandamus commanding upon the respondents to consider the case of the Petitioner for allotment of the aforesaid quarter being quarter No. B-2662/2 on Long Term Lease after accepting the balance amount within a specified period.
4. Counsel for the petitioner submits as under:

a) Vide order No. 08/2000 dated 04.04.2000 the scheme for allotment of Heavy Engineering Corporation quarters on long term leases was issued by the respondents.

b) The quarters were primarily meant for the employees of Heavy Engineering Corporation and as the petitioner did not fall under this category, the claim of the petitioner fell under the eligibility criteria being Clause 3.6. The clause 3.6 reads as follows:-

“Quarters still remaining surplus, to others, on the basis of competitive bidding.”

c) Pursuance to the said circular, the petitioner applied for allotments to the aforesaid quarter B-2662/2 as back as on 17.05.2002 and deposited the required earnest money of Rs. 18,000/-. Counsel submits that the said application was not processed by the respondent’s in spite of their own scheme as contained in Office Order No. 8/2000.

d) The petitioner was throughout pursuing his matter before the respondent and ultimately the respondent handed over the impugned order dated 13.08.2010 wherein the petitioner was informed that the quarter for which the petitioner has made an application was under unauthorized occupation and it has been recently vacated and it was also mentioned in that letter that there was no provisions in the concerned circular or office order to allot any quarter to outsiders in permanent colony.

e) The letter also referred to a newspaper reported in Prabhat Khabar dated 23.10.2002 wherein others including the petitioner was asked to take back their earnest money.

f) Counsel for the petitioner by referring supplementary affidavit dated 01.09.2011 submits that the respondents have taken inconsistent stand in the counter-affidavit. He refers to para 13 of the counter affidavit to show that the respondent has stated that the petitioner was not found eligible for allotment of quarter No. B-2662, Sector-2, and at the same time the respondents have taken a stand that the said quarter was under valid allotment of

one of the employees of the Corporation namely Sri E. Tigga who expired on 1981. Subsequently the quarter was occupied by his wife and at later stage was sub-let to the petitioner. Ultimately the proceeding under the provisions of Public Premises (Eviction of Unauthorized Occupants) Act, 1971

was initiated against Mrs. P.Tigga and an order of eviction dated 23.02.2007 was passed by the Estate Officer and ultimately, the petitioner was found to be in possession of the quarter and accordingly the petitioner was evicted on 31.03.2010.

g) Counsel for the petitioner has also referred to Annexure-1 of the writ petition to show that similar scheme for allotment of quarter to others by way of competitive bidding has been continued by the respondent vide their Circular No. 13/2002 dated 01.11.2002 and by referring to the supplementary affidavit filed on dated 01.09.2011, the petitioner has mentioned that the quarter for which the petitioner had made an application is still vacant for which advertisement for allotment to the serving employees was issued vide advertisement dated 13.07.2011 .

Â 5. Counsel for the respondents, on the other hand, submits that although as per the scheme of allotments of Heavy Engineering Corporation's quarter on long term lease basis dated 04.04.2000, the petitioner was eligible for applying for the quarter but the same has to be done by the competitive bidding as the petitioner is not an ex-employee therefore he was not found eligible for allotment of quarter as the petitioner applied for the quarter which was already under valid allotment. Accordingly the petitioner along with others were asked to take back their earnest money and, if any, fresh advertisement is made then the persons including the petitioner may apply a fresh. Counsel for the respondent also submits that order of eviction of the quarter involved in this case was passed under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 against the wife of the ex-employee in the year 2007 and as the petitioner was occupying the said quarter he was ultimately evicted on 31.3.2010. He further submits that admittedly the quarter was vacant and accordingly, an advertisement was issued in the year 2011 for the purpose of allotments of the quarters to the newly recruited employees or the ex-employees of the respondents who have preferential right under the policy decision itself. Counsel for the respondents by referring to the prayer made under the writ petition submits that the impugned order dated 13.08.2010 as contained in Annexure-8 has been rightly passed and he submits that the prayer made in the writ petition is mis-conceived particularly in view of the facts that no order can be passed in favour of the petitioner without any competitive bidding.

6. Considering the facts and circumstances of this case, this Court is not inclined to grant any relief to writ petitioner and accordingly, the writ petition

is dismissed on account of the following facts and reasons:-

a. Admittedly, the petitioner had applied for allotment of quarter pursuant to the policy decision as contained in office Order No. 8/2000. Petitioner

being the outsider was eligible for competitive bidding. Admittedly, the quarter for which the petitioner had applied was not vacant and as per the

record of the respondents it had continued to be in possession of the family of ex-employee. Accordingly, this court is of the view that the quarter was

already under the occupation of the family of ex-employee of the respondent and was not available for competitive bidding under the scheme of 2000.

b. There is no dispute that the newspaper publication dated 23.10.2002 was issued by the respondents and the persons including the petitioner were

asked to take back their earnest money back which they have deposited for allotment of quarter.

c. In spite of paper publication, the petitioner, did not take any steps to take back the amount.

d. In such circumstances, for the purposes of allotment of quarter on long term lease the petitioner was free to apply afresh if the scheme so permits.

e. From the perusal of the impugned order dated 13.8.2010 it appears that a reasons has been mentioned that management had found that the quarter

was occupied and the same has been vacated only in the year 2010 when the petitioner was found in possession as the quarter was sub-let to the

petitioner by the wife of exemployee of the respondent. In such circumstances there was no occasion for the respondents to process the application of

the petitioner in connection with the allotment of the quarter which as per the records of the respondent was allotted to an ex-employee.

f. Moreover a quarter could be allocated to a person like the petitioner only by way of competitive bidding and merely filing an application or payment

of earnest money does not confer any right upon the petitioner to have the quarter.

g. This court is of the considered view that it was not possible for the respondents to go for competitive bidding and allot the quarter which as per the

company's record was in occupation of the family members of ex-employee for which the order of eviction was passed by the competent

authority only in the year 2007.

h. Moreover, on 23.10.2002 notice was issued in the newspaper that the persons who had deposited the earnest money are required to take back their

money and subsequently if any decision is taken by the appellants for allocation of quarter they are free to apply. In spite of publication of the said

notice, the petitioner did not apply for refund of the earnest money and accordingly vide impugned order dated 13.08.2010 the respondents asked the

petitioner to take back his earnest money. The petitioner instead of applying for refund as per the impugned order dated 13.08.2010 filed the instant

writ petition seeking directions upon the respondents to allocate the aforesaid quarter.

i. This court is of the view that the impugned order dated 13.8.2010 as contained in Annexure-8 has rightly been passed and the same does not call for

any interference and accordingly the petitioner is also not entitled to other connected reliefs as prayed for in this writ petition.

j. However the Petitioner may apply for refund of the earnest money and if such application with the requisite documents is made, the respondent is

directed to refund the same within a period of four weeks from the date of receipt of application.

7. The writ petition is hereby dismissed. It is made clear that this order will not be a bar for the petitioner to apply for quarter in future if permissible as

per the policy of the respondents.

Â I.A. No. 7144 of 2013

Â 8. The interlocutory application is dismissed as not pressed.