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**(2016) 08 JH CK 0147**

**In the Jharkhand High Court**

**Case No :** Writ Petition (C) No. 1472 of 2016

Raj Kumar — APPELLANT

Vs

Jharkhand State Agricultural Marketing Board, Ranchi — RESPONDENT

**Date of Decision :** 17-08-2016

**Acts Referred:**

**Citation :** (2017) 1 AIRJharR 144 : (2016) 4 JCR 605

**Hon'ble Judges :** Mr. Aparesh Kumar Singh, J.

**Bench :** Single Bench

**Advocate :** Mr. Ashish Kr. Thakur, JC to SC (L and C), for the Respondent/State; Mr. V.P. Singh, Senior Advocate and Mrs. Amrita Kumari, Mrs. Rashmi Kumari, Advocates, for the Petitioner; Mr. Mrinal Kanti Roy, Advocate, for the Respondent-Board

**Final Decision :** Disposed Off

## Judgement

Mr. Aparesh Kumar Singh, J. - Heard learned counsel for the parties.

2. Petitioner is under an agreement dated 1st June, 2015 (Annexure-B to the counter affidavit of respondent nos. 1 to 3) for allotment of vacant land 20'' x 40'' size = 800 sq.ft. and setting up temporary construction for shop of animal feed in Jhumra Haat, Hazaribag behind shop of Shri Vijay Prasad @ Rs.3.00 per sq.ft. with the Agricultural Produce Market Committee, Hazaribag. Petitioner was permitted occupation of vacant land as described in the schedule as per Clause-1 of the agreement the tenure of which is for 10 years. As per Clause-8 the trader shall not make any addition or alteration in the premises without specific prior permission in writing from the market committee.

3. As per the petitioner he had sought permission for setting up pucca/semi pucca construction through application dated 8th July, 2015 as the cattle fodder kept in the temporary construction was exposed to the vagaries of weather in the monsoon season. However, without waiting for a formal permission, he set up a semi pucca construction of a small room/godown leaving large portion of allotted

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area open. He regularly made payment of rent as per terms of allotment apart from the security deposit made initially. Petitioner, however, was put to trouble when the respondent authorities of the State chose to undertake demolition of the structure suddenly on 2nd March, 2016 without any notice. Petitioner has, therefore, approached this Court for restraining the respondents from interfering in the possession of the petitioner over the allotted shop and its area, restore the structures and pay damages for the illegal acts of demolition.

4. Counsel for the petitioner submits that the demolition was not preceded by any proper notice as the communication bearing letter no.105 dated 13th May 2015 of the Marketing Secretary, Agricultural Produce Market Committee, Hazaribag to the Sub-Divisional Officer-cum-Special Officer, Agricultural Produce Market Committee, Hazaribag (Annexure-E to the counter affidavit) would also show that they related to several other shop owners, not the petitioner. Petitioner has, therefore, been subjected to illegal dispossession and demolition without any authority of law.

5. Respondents in their counter affidavit have contested the claim of the petitioner stating that no permission for putting up the permanent construction on the plot allotted to him was ever granted. The demolition has been carried out by the Circle Officer as several cases of encroachment have come to the notice of the respondents. Therefore, request was also made to the Sub-Divisional Officer, Hazaribag for its removal. Petitioner cannot claim a legal right to protect an illegal structure put up without permission in teeth of the conditions of the agreement. Therefore, there is no merit in the writ petition.

6. Learned counsel for the respondent-State and the Market Committee have referred to the communication at Annexure-6 dated 19th February, 2016 between the Director, Vigilance, Jharkhand State Agricultural Marketing Board and the authorities of the Agricultural Produce Market Committee, Hazaribag on the question of illegal shed on the allotted area to the petitioner. Counsel for the petitioner, however, submits that the aforesaid communication is a malafide act on the part of the respondent no.5 actuated by grudge.

7. I have considered the submissions of the parties in the light of material facts pleaded and noticed herein above.

8. In the absence of any permission to erect permanent/semi permanent structure beyond the terms of the agreement (Annexure-A), the petitioner cannot claim a legal right to set up a permanent structure and continue on the allotted area of 800 sq.ft. However, during the subsistence of the agreement petitioner should be allowed to set up temporary structure for the purposes of carrying out of the business activities for which the area has been allotted to him. The petitioner has submitted that because of demolition of some of the structures he has not been able to use the rest of the area for the purposes of his shop and also not been able to put up temporary structure for its occupation. Respondent authorities of the Agricultural Produce Market Committee, Hazaribag

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would therefore permit the petitioner to put up temporary structure over the allotted area during subsistence of the agreement for carrying out the business activities strictly in terms of the agreement in question. However, petitioner has failed to make out a case for any relief in the matter of demolition of the permanent/temporary structures which were found to be in encroachment and in teeth of agreement itself. Petitioner has no legal right to set up a permanent structure on the allotted area. However, if any claim for damages arises under any law on proof of facts it is for the petitioner to avail of such remedy before a competent court/forum where question of facts can be established by way of evidence.

9. Writ petition is accordingly disposed of with the aforesaid observations.

10. However, the observations made herein above should not be construed in any manner that this Court has expressed any opinion as to the issue relating to the terms and conditions of the agreement or their performance by either of the parties.

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