
(2020) 01 JH CK 0055
In the Jharkhand High Court
Case No : Writ Petition (C) No. 713 of 2014

Raj Kumar Himatsingka

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 29-01-2020

Acts Referred:

Citation : (2020) 01 JH CK 0055

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Indrajit Sinha, Bibhash Sinha, Manoj Kumar

Final Decision : Allowed

Judgement

1. Heard Mr. Bibhash Sinha, learned counsel for the petitioner and Mr. Manoj Kumar No.3, learned S.C. (Mines)-II appearing on behalf of the respondent-State.
2. Notice upon respondent no.5 has been effected.
3. The petitioner has preferred this writ petition for quashing the order dated 23.12.2013 passed in R.M.P. Case no. 14 of 1994-95 by the Deputy Commissioner, Dumka, whereby, the petitioner has been directed to remove the construction from 40 Sq. ft. area situated on plot no.1576. The grievance of the petitioner is that on complaint of one Pawan Kumar Agrawalla (respondent no.5), who happens to be the tenant of the petitioner, the proceeding for removal of encroachment was initiated.
4. Learned counsel for the petitioner submits that earlier the firm of the petitioner has moved before this Court in C.W.J.C. No. 9097 of 1996(P). Vide order dated 19.01.2012, this Court after recording certain facts directed the Deputy Commissioner, Dumka to complete the enquiry and pass appropriate order in accordance with law after giving proper opportunity to the petitioner and while doing so the Deputy Commissioner, Dumka, if so required, would ignore the earlier order. By way of referring the order dated 05.02.2013, he submits

that on that day hearing was concluded and the matter was adjourned for orders on 28.02.2013. He further submits that after conclusion of hearing, it transpires from the order dated 23.07.2013 that the Deputy Commissioner, Dumka has called for opinion from the Government Pleader and after that the impugned order has been passed on 23.12.2013, whereby, the petitioner has been directed to remove the construction from plot no. 1576. So the contention of the petitioner is that after the hearing was concluded, there was no occasion to call for opinion from the Government Pleader that too without providing any opportunity of hearing to the petitioner. The question of jurisdiction has also been raised by the learned counsel for the petitioner.

5. Learned counsel appearing for the respondent-State submits that from the impugned order, it does not transpire that the opinion of the Government Pleader was taken into consideration by the Deputy Commissioner, Dumka.

6. Considering the above facts, this Court finds that the hearing was concluded on 05.02.2013 and the matter was adjourned for orders on 28.02.2013. There was no occasion to the Deputy Commissioner, Dumka to further call for opinion from the Government Pleader as the hearing was already concluded that too in absence of the petitioner. The petitioner was not provided opportunity in view of the opinion of the Government Pleader. Thus, there is no compliance of the earlier order passed by this Court in C.W.J.C. No. 9097 of 1996(P) (*supra*). In that view of the matter, the impugned order dated 23.12.2013 passed in R.M.P. Case no. 14 of 1994-95 by the Deputy Commissioner, Dumka is quashed. The matter is remitted back to the Deputy Commissioner, Dumka to decide the matter afresh after providing proper opportunity to the petitioner, in accordance with law within a period of four weeks from the date of receipt/production of a copy of this order.

7. Accordingly, this writ petition stands allowed and disposed of.