

(2016) 04 JH CK 0134
In the Jharkhand High Court
Case No : W.P.(C) Case No. 4855 of 2007

Rajendra Prasad Singh

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 21-04-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 3 JCR 690

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

Bench : Single Bench

Advocate : Mr. Arshad Hussain, Advocate, for the Petitioner; M/s Mahesh Tewari, S.C, Railway and Varun Prabhakar, Advocates, for the Respondents

Final Decision : Dismissed

Judgement

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

2. Two petitioners, one claiming to be representing the Hatia Railway Market Committee and another in his individual capacity had approached this Court seeking to raise grievance in respect of members of Hatia Railway Bazar Samiti who are said to be the allottees of the shops made on railway plot no. P/1 to P/67 of the Hatia Railway Market Ranchi. Petitioners have made following prayers:-

(i) to direct the respondent no.4 to accept the amount paid by the allottees up to December,2006 as full and final as the respondents cannot charge the arrear amount with increased rate retrospectively.

(ii) Not to increase the occupancy charge of renewal of lease of the respective shops arbitrarily.

(iii) they have prayed for restraining the respondents from taking coercive steps like evicting the shop owners from their respective shops.

3. On 19.6.2008 the matter was taken up and an interim order was passed

directing maintenance of status-quo. The matter thereafter remained pending and the respondent-Railway appeared and filed counter affidavit. The respondent-Railway also raised the plea objecting to the maintainability of the writ petition at the instance of the petitioner who claims to have filed the writ petition in a representative capacity. Learned counsel for the petitioner undertook to produce letter of allotment which was not produced by the next date and again on 28.1.2016 they were directed to comply with the order dated 6.1.2016. By way of supplementary affidavit filed on 15.2.2016 the allotment of plot through letter dated 17.4.1976 in the name of Ram Pravesh Singh and another license for temporary occupation of the Railway land vide Annexure-9 in the name of Rajendra Prasad Singh dated 6.1.1983 were brought on record. No other allotment letters of any such members were brought on record. Taking into account all these facts and also that there was an interim order operating, the matter was posted for consideration on 2.3.2016, when the following order was passed:-

"Petitioner herein claims to be representing the individual shop allottees under Hatia Railway Market. It is not in dispute that the rate of rent remained frozen @ Rs. 1100/- per year since 1975 till it was enhanced in 2006 @ Rs. 5500 per year with retrospective effect from April, 2004.

2. When the matter was taken up earlier on 19.6.2008, an interim order was passed directing maintenance of status-quo as existing on the said date. Respondents allege that except 7 persons out of 67 rest have not paid even the existing rate of Rs. 1100/- per year to the Railways thereafter.

3. Learned counsel for the petitioner submits that the enhanced rate is arbitrary and dependent upon the value of the land.

4. Learned counsel appearing for the Railway submits by referring to the Circular dated 10.2.2005 (Annexure-1) to their counter affidavit dated 19.9.2012 that it is based upon the uniform yardstick at a defined percentage applicable through out India.

5. Though learned counsel for the petitioner fallen back upon the interim order of status-quo to defend non-payment of existing rate till date but that cannot be an acceptable explanation for not paying the existing rate for all these years. The Circular dated 10.2.2005 is not under challenge. Individual allottees cannot take the benefit of the interim order of status quo to refuse payment of even the existing rates. It also transpires from the statements of learned counsel for the Railway that there is element of doubt relating to the fact whether the original allottees continues in occupation of plot/shops or not or that it been illegally sublet to some other person.

6. In such state of facts, there is no justification on the part of the individual allottees to refrain from making payments of the rent for all these year. Individual allottees should therefore pay the existing rates till the date of issuance of the notification i.e. 21.11.2006 and thereafter make payments of

arrears of 50% of the enhanced rate at Rs. 5500/- per year to the Railways within a period of 6 weeks from today . Learned counsel for the petitioner would file an affidavit giving proof of payments made by allottees said to be member of the petitioner's association.

7. Respondent-Railways in the meantime would conduct an inquiry in respect of the fact whether the original allottees are subsisting and whether plots/shops in question are being occupied by the original allottees or have been illegally sublet to someone else. It would also be open to the respondents to take steps in accordance with law for eviction of any such allottees who violated the terms of the license by illegally subletting the plots/shops to any other third person or failed to make payment as directed herein above. The respondents would also file supplementary counter affidavit before the next date about the steps taken.

In view of the aforesaid order passed, I.A. No. 2636 of 2015 stands disposed of.

8. For further consideration, list this case after 6 weeks on 21.4.2016".

4. Petitioners have not filed any supplementary affidavit showing payment of any amount to the Railway as directed by the order dated 2.3.2016. Except 7 out of 67 persons, who have paid the existing rate of Rs. 1100/- per year to the Railways after passing of the interim order dated 19.6.2008, no other allottees seem to have paid even on the existing rate. The enhanced rate is Rs. 5500/- per year as per the notification dated 21.11.2006 in the light of the circular of Railways dated 10.2.2005, which apply uniformly to all the Railway Stations of different category in the country.

5. As is evident in the interim order dated 2.3.2016, the circular dated 10.2.2005 was not under challenge. Petitioners have now filed an interlocutory application seeking to challenge the said circular dated 10.2.2005 through I.A. No.2011 of 2016 after passing of the previous order. Petitioners have also filed I.A. No. 2317 of 2016 stating that the demand been raised in the name of one Ram Pravesh Singh, petitioner no.2 including the liquidated damage charges, conservancy cess charges and service charges inflating the total outstanding amount to Rs.1,10,109 due from 1.1.2004 to 31.3.2017. Petitioners have not deposited any amount on account of inflated demand raised by the respondents. According to the petitioners they were ready to pay the amount in question as directed by the interim order dated 2.3.2016 but payments have been refused.

6. There is no supplementary affidavit filed on behalf of the petitioners giving proof of payment by the allottees, said to be the members of the petitioner-association enclosing any such draft or cheque even of payments of arrears of rent at the existing rate till 21.11.2006 or 50% of the enhanced rate of Rs. 5500/- per year required to be paid w.e.f 21.11.2006, as per para 6 of the interim order dated 2.3.2016. Petitioners have therefore failed to comply with the conditions incorporated in the interim order. Petitioner and the other allottees said to be the members of the Hatia Railway Market Samiti have enjoyed occupation of the allotted shops for over a period of 10 years without making

payments of rent at existing rate of Rs. 1100/- per year or the enhanced rate of Rs. 5500/- per year till date. Though petitioners had earlier taken the garb of the interim order dated 19.6.2008 but even after the order dated 2.3.2016 no payments of any amount of license fee/rent in respect of the allotted shops/plots to the petitioner or any of such allottees have been made, which shows not only breach of the order passed by this Court but complete evasive attitude on their part. The allottees, if any, cannot claim to continue in occupation in unauthorized manner without making payment of rent/license fee as prescribed from time to time for more than a decade.

7. The order dated 2.3.2016 at para 7 was very categorical while giving liberty to the respondent-Railways to take steps for eviction of any such allottees who have violated the terms of the license by illegally subletting the shop to other persons or failed to make payment as directed therein. Petitioners have therefore disentitled themselves to any discretionary relief from this Court in exercise of Article 226 of the Constitution of India. Further there is a question mark on the locus of petitioner no.1, who is representing the whole lot of allottees as there is no documents to show any such Samiti been constituted and registered under Societies Registration Act or under any other law. There does not seem to have any authorisation given on the part of the other allottees in favour of the petitioner to meet the requirement of Order 1 Rule VIII.

8. This Court is constrained to observe that petitioners have enjoyed indulgence of this Court under the discretionary remedy under Article 226 of the Constitution of India without showing their bona fide and proper conduct on their part. As already been observed herein above, the circular dated 10.2.2005 had also not been challenged earlier and a belated challenge is made after passing of the interim order dated 2.3.2016, which cannot be allowed to be entertained after pendency of the writ petition for 9 years and prevalence of the said circular since 11 years by now. The said I.A. No.2011 of 2016 and I.A. No. 2317 of 2016 are therefore rejected.

9. The writ petition is dismissed with cost of Rs. 10,000/- to be deposited in the office of JHALSA within a period of 2 weeks. Respondent-Railways are at liberty to take steps in accordance with law in respect of the petitioner or any other defaulter allottees.