

(2008) 05 JH CK 0009
In the Jharkhand High Court

Rajesh Kumar Vasani

APPELLANT

Vs

Jamshedpur Notified Area Committee and Others

RESPONDENT

Date of Decision : 09-05-2008

Acts Referred:

Citation : (2008) 3 JCR 358

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Judgement

Narendra Nath Tiwari, J.—The petitioner, in this writ petition, has prayed for quashing Letter No. 133 dated 8th February, 2008, whereby the petitioner has been directed by the Jamshedpur Notified Area Committee to demolish the illegal construction made by the petitioner within 48 hours, lest the same shall be demolished and in that event, the entire expenses shall be realized from the petitioner.

2. The grievance of the petitioner is that before issuing the said letter, no notice was served on him, though in the impugned notice it has been mentioned that two notices were given to him. It has been submitted that the petitioner has not made any new construction. The same old house, which is standing over the plot since several decades, is being repaired and renovated. The impugned notice is contrary to the provisions of law and the rules of natural justice and is not sustainable and fit to be quashed.

3. Learned Counsel appearing on behalf of the Jamshedpur Notified Area Committee, on the other hand, submitted that it is evident from the impugned notice that earlier two notices dated 13th July, 2007 and 21st January, 2008 were sent to the petitioner asking him to stop illegal construction and to file his reply, but he did not appear and no reply was filed. Ultimately, the impugned notice has been issued u/s 364 of the Jharkhand Municipal Act, 2000.

4. Mrs. Ritu Kumar, learned Counsel, appearing on behalf of the petitioner submitted that the notice u/s 364 can be issued only if the person is required to

execute the work or to do the thing, fails within the time specified in any requisition, to begin to execute such work or to do such thing, then only the Commissioner or any person authorised in that behalf, may after giving 48 hours" notice of their intention, enter upon the land and perform all necessary acts for the execution of the work exercising the power u/s 364 of the said Act. The provisions of Sections 359 and 363 of the Jharkhand Municipal Act have to be complied with before taking any action, as envisaged in Section 364 of the said Act.

5. It has been submitted that no notice was ever served to the petitioner u/s 359 asking him to execute any work or to do anything, which has not been executed or done. No decision of any Commissioner or authorised person taken u/s 359 was ever communicated to the petitioner enabling him to file an objection against such requisition, as provided in Sub-section (2) of Section 359. It has been submitted that the said provision of Sub-section (2) of Section 359 makes it imperative to serve a notice, inviting objections against any such requisition. Even with the impugned order, no such requisition has been annexed. Without giving any notice or opportunity of hearing, as provided u/s 362 and explaining the order passed u/s 363 of the said Act. the respondents cannot enforce or execute any such work. Learned Counsel further submitted that the power u/s 364 can be exercised only in the case of enforcement of the requisition. No requisition u/s 359 has been made for execution of any work. The order of demolition on the allegation that it is being constructed without getting the plan success does not come within the ambit of said provision.

6. I have heard learned Counsel for the parties and considered their submissions.

7. From Annexure-5. it appears that the impugned notice has been issued under the purported exercise of power u/s 364, directing the petitioner to demolish the illegal construction. The petitioner denied to have received any notice u/s 359 and opportunity of hearing as required u/s 362 of the said Act. However, the petitioner, on receipt of the impugned notice, has not approached the respondents and has not filed any objection before respondent-committee. Learned Counsel for the petitioner submitted that the petitioner has rushed to this Court under the threat of immediate demolition.

8. Considering the above and circumstances appearing in this case, this writ petition is disposed of giving liberty to the petitioner to approach the concerned respondent and file objection taking all the points, taken in the writ petition. If such objection is filed, the same shall be heard and decided in accordance with the provision of Jharkhand Municipal Act and rules framed thereunder.

9. It has been submitted that the petitioner shall file objection within two weeks from the date of receipt/production of a copy of this order. Till the objection filed by the petitioner is finally heard and decided on merit, no coercive action shall be taken against the petitioner. Let a copy of this order be given to learned Counsel for the parties.