
(2016) 04 JH CK 0070

In the Jharkhand High Court

Case No : W.P.(C) No. 5978 of 2015 with W.P.(C) No. 177 of 2016

Ranchi Dharmasala Trust

APPELLANT

Vs

State of Jharkhand and others

RESPONDENT

Date of Decision : 07-04-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 162 AIC 762 : (2016) 4 JBCJ 604 : (2016) 3 JCR 1 : (2016) 2 JLJR 635

Hon'ble Judges : Aparesh Kumar Singh, J.

Bench : Single Bench

Advocate : Anil Kumar Sinha, Sr. Advocate, Bhaiya V. Kumar, Advocate, for the Appellant; L.C.N. Shahdeo, Advocate, for the Respondent

Final Decision : Allowed

Judgement

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

2. The petitioner has challenged the letter no. 4767 dated 8.12.2015(Annexure-14 to the first writ petition) issued by the Municipal Commissioner, Ranchi Municipal Corporation-respondent no.3 where under petitioner has been directed to hand over the building of Dharmasala including all structures to R.M.C by 12.12.2015, failing which, the Corporation would be compelled to take lawful steps for its acquisition.

3. During pendency of the first writ petition, by an interim order dated 15.12.2015 the respondents were permitted to take action in accordance with law. However, they were restrained from taking possession of the petitioner. On the same date, the respondent no.3 vide letter no. 4873 dated 15.12.2015(Annexure-18 to the second writ petition) terminated the lease of the petitioner on the grounds of violation of terms and conditions of the lease deed. Lease is of 1955 over an area of 10 Katthas at Rs. 5 per annum(Annexure-1 to both writ petition).

4. The grounds of termination of lease inter-alia are as follows:-

(i) The lease was executed with Ranchi Dharmashala Trust but without permission of the Corporation, it has been renamed as Jharkhand Vaish Athithi Bhawan, which is evident from the letter pads used.

(ii) Since 2000-2001 the lease rent is not being paid.

(iii) About 2.5. khattas of land has been encroached upon and a kitchen has been constructed there upon, which has been verified through the Corporation's Amin.

(iv) Though the lease was executed for a Dharamashala for use and stay of ordinary citizen at nominal charge but it is being used for commercial purposes and huge amount are being charged from people.

(v) Two shops have been constructed in the premises of Dharamashala and is let out on rent, which is clear violation of the conditions of the lease agreement.

(vi) By letter no. 1412 dated 14.7.2006 petitioner was asked to pay the fee for an area of 1860 square feet of encroached land

(vii) By letter no. 1694 dated 11.8.2006 it was asked to deposit the dues amount and execute a fresh agreement.

(viii) Reminder was also issued vide letter no. 2055 dated 15.9.2006.

(ix) Despite repeated opportunities to deposit the outstanding due and to enter into fresh agreement, petitioner trust has failed to do so.

5. Based on these grounds, the respondent no.3 has taken a decision to terminate the lease agreement and realise the outstanding dues and take over the premises and the property as that of the Corporation. The lease deed dated 26.4.1955 executed by the Municipal Commissioner, R.M.C was in relation to Municipal survey plot no. 730, 731 and 732 within ward no.2(now ward no.23) of Ranchi Municipality of an area more or less 10 kathas situated at Municipal cattle market on payment of early rent of Rs. 5/- with certain terms and conditions. Clause 1 to 7 of the lease agreement under Schedule Part-I at Annexure-1 is quoted herein below:-

"(1) The lease will be a permanent

(2) The lessee shall pay Rupees five annual as rent in the month of April of every years,

(3) The rent shall become payable from 1st April every year in default of payment of the said rent in the manner aforesaid on interest of Rs.6-1/2 of per annum shall be payable to the lessor and the same shall be realised at the option of the lessor either Civil Courts or under the provisions of the Public Demand Recovery Act 1914 ;

(4) The lessee shall pay all municipal and other local rates and taxes that may

for the time being be assessed and charged upon the building or the buildings erect thereon.

(5) The building or buildings which will be constructed shall be named and styled as Ranchi Dharamshala and the same shall be open to the public without any Sri Digamber Ram Chairman Ranchi Municipality 27.4.55, Sri Jamuna Prasad 26.4.55(page-4) and distinction of Caste creed and colour

(6) The building or buildings which will be built upon the land leased out shall be utilised for the purpose of Dharamshala only and vacant land also if any shall not be utilis for any commercial or other purposes than the purpose of Dharamshala ; and

(7) On non-observance or breach of the terms mentioned above and also in the case of the Dharamshala leases to function the purpose. The lease shall terminate and become void and then the building of buildings and all other structures standing over the said land shall be vest with the Ranchi Municipality the lessor and the Municipality will be entitled to take possession of the same without payment of my compensation".

6. Petitioner has taken the preliminary ground to assail the impugned order of termination of lease as being in violation of the principles of natural justice as it was never given any notice to respond to the proposed action of the termination of the lease agreement itself.

7. Respondents in their counter affidavit in the second writ petition have referred to providing numerous opportunities to the petitioner where after only the impugned action of termination has been taken on a clear ground of flagrant violation of various conditions particularly clause 7 of the agreement. Annexure-B series relied upon by learned counsel for the respondents are being traversed by learned senior counsel for the petitioner as being notice of demand of outstanding dues and notice to enter into fresh agreement.

8. These notices are apparently of the year 2006 being 14.7.2006, 11.8.2006 and 14.9.2006. Letter no. 3398 dated 9.9.2014 (Annexure- 10 to the second writ petition) is also being relied by learned counsel for the respondent as notice to remove encroachment of an area of 2439 square feet of land by the petitioner trust, failing which, steps would be taken to remove encroachment and realisation of dues. This letter again is not in the nature of notice of termination of lease as pointed out by learned counsel for the petitioner.

9. Learned counsel for the petitioner has relied upon a judgment rendered by learned Single Judge of the Patna High Court in the case of Deba Jyoti Dutta v. State of Bihar and others reported in 1988 PLJR 440, (Ranchi Bench) to contend that the respondents were not only obliged to give proper hearing before any termination of lease but on their own could not take forcible possession of the leased property even after termination.

10. Apparent from the records and pleadings is the fact that the termination of

lease has not been preceded by any proper notice and opportunity to the petitioner to respond on the ground on which the lease agreement has been terminated. Notice, which are enclosed to the counter affidavit and have been referred to herein above are of 2006. The impugned termination order has been issued on the same date 15.12.2015 when the interim protection was granted to the petitioner in the first writ petition from being dispossessed while the respondents were permitted to proceed in accordance with law. The decision appears to have been taken in haste on the same date without any opportunity to the respond to the alleged grounds of violation of lease agreement.

11. This Court therefore is not required to make any comment on the merit of the allegation contained in the impugned termination letter, which the petitioner may have liberty to respond upon due notice to it. In such circumstances, cancellation of lease agreement is held to be in violation of principles of natural justice being without any notice. Consequently the impugned termination order dated 15.12.2015(Annexured 18 to the second writ petition) is quashed. Needless to say that respondents would be at liberty to take a fresh decision in the matter after due opportunity to the petitioner in accordance with law. On the quashing of the impugned order of termination of lease in the second writ petition, the order to take over the possession of the leased property from the petitioner by virtue of the impugned order dated 8.12.2015(Annexure-14 to the first writ petition) will have no consequence till a fresh decision is taken on the question by the respondent-Corporation in accordance with law.

12. The writ petitions are allowed in the manner and to the extent indicated herein above.