
(2007) 10 JH CK 0030
In the Jharkhand High Court
Case No : L.P.A. No. 47 of 2006

Roy Estate

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 01-10-2007

Acts Referred:

Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 — Section 11(2)
Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2 , Order 7 Rule 11
Constitution of India, 1950 — Article 226, 227
Defence of India Rules, 1962 — Rule 75A
Ranchi Municipal Corporation Act, 2001 — Section 247(1)
Requisitioning and Acquisition of Immovable Property Act, 1952 — Section 19, 23, 6(2)

Citation : (2008) 1 JCR 178

Hon'ble Judges : M. Karpaga Vinayagam, C.J.;Amareshwar Sahay, J

Bench : Division Bench

Advocate : Binod Kanth and Aparesh Kumar Singh, for the Appellant; Anoop Kumar Mehta and H.K. Mehta, G.A., for the Respondent

Final Decision : Dismissed

Judgement

M. Karpaga Vinayagam, C.J.—Roy Estate, a partnership firm, the appellant in this appeal is the petitioner in the writ petition.

2. The petitioner-appellant filed the writ petition numbered as W.P.(C) No. 4955 of 2004 for the issuance of mandamus directing the respondent authorities, namely, the officers of the Government as well as the Principal, Ranchi Women's College to forthwith relinquish the possession of the building in question, presently occupied as a Girls' Hostel, which has been de-requisitioned by the Deputy Commissioner, Ranchi by his order dated 08.07.2003 to be handed over back to the petitioner, the owner on the ground that the said building being more than 90 years old has been declared as dangerous and unfit for habitation under the Ranchi Municipal Corporation Act.

3. Learned Single Judge, by the order dated 20.12.2005, after hearing the

parties concerned, though dismissed the same holding that the State authorities to determine the question whether the building is to be retained with them or to be returned to the owner, the petitioner-appellant.

4. Aggrieved by this order of the learned Single Judge, the petitioner-appellant has filed this letters patent appeal under Clause 10 of the Letters Patent, praying for setting aside the impugned order of the learned Single Judge and for granting the relief sought for in the writ petition.

5. The relevant facts, which are required for disposal of this appeal are as follows:

(i) The building in question, commonly known as Katras House was requisitioned from the owner of the property under Rule 75A of the Defence of India Rules, which empowers the Government to requisition any property for securing the defence of British India for maintenance of the public order.

(ii) Accordingly, the building in question was taken over by the Central Government on the consent of the owner of the land in the year 1942.

(iii) Thereafter the building in question was used for accommodating the Indian Army. Later on it was pressed into service for accommodation of auxiliary nurses and midwives. The premises was vacated by the nurses. Thereupon, the Deputy Commissioner on the request of the Principal, Ranchi Women's College, allotted requisitioned house in their favour by the allotment order dated 30.04.1958 u/s 11(2)(b) of the Bihar Building (Lease, Rent & Eviction) Control Act subject to payment of monthly rent to the landlord and observance of the previous terms of tenancy, if any.

(iv) In pursuance of allotment order the said building was occupied by the Ranchi Women's College and the same was used as Girls' Hostel under Principal, Ranchi Women's College in favour of the previous owner of the said building, Shri L.N. Dey.

(vi) Thereafter the sons of the previous owner of the property, Mr. L.N. Dey were inclined to sell off the property in question and upon lawful consideration and consent of the parties, the property was sold through a registered sale deed to the petitioner-appellant on 05.01.2001.

(vii) Thereafter the petitioner-appellant has been receiving rent from the Principal of Ranchi Women's College.

(viii) On inspection of the said building conducted by Ranchi Municipal Corporation, the said building was found to be un-inhabitable, dangerous and unsafe. Therefore, in exercise of powers u/s 247(1) of the Ranchi Municipal Corporation Act, the said building was declared as dangerous. The petitioner-appellant was directed either to demolish the said building or carry on extensive repair works to make it habitable.

(ix) Therefore, the petitioner made a request to the Deputy Commissioner, Ranchi to de-requisition the building and get relinquished and hand over the

same to the owner so that the said building can be demolished or repaired extensively.

(x) Upon such representation, the Deputy Commissioner, on being satisfied that the state of the building is unsafe for habitation, passed an order dated 08.07.2003 to the effect that the said building is being de-requisitioned and directed the Principal, Ranchi Women's College to hand over the possession of the building to the owner, the petitioner-appellant.

(xi) Subsequently, within a month, i.e., on 25.08.2003 the Deputy therein that the Secretary, Human Resources Development Department, Government of Jharkhand and the Vice Chancellor, Ranchi University will take a final decision in respect of the ownership and title of the property and Principal, Ranchi University was directed to obtain a proper order from the aforesaid two authorities before handing over possession of the building to the petitioner.

(xii) Upon such modification made in the order dated 25.08.2003, the petitioner-appellant represented the matter before the Secretary, Department of Education on 08.09.2003 and on the said representation, the Chief Engineer and Executive Engineer were directed to make a physical inspection of the building and to submit a report.

(xiii) Accordingly, they inspected and submitted a report giving the details of the condition of the building, which is unfit for habitation.

(xiv) Even after receipt of the said report, no action had been taken by the Secretary. Therefore, the petitioner was constrained to approach this High Court under Article 226 of the Constitution of India for issuance of mandamus directing upon the respondent authorities to vacate and relinquish the building in question in favour of the petitioner.

(xv) Learned Single Judge, on consideration of the affidavit and Counter affidavit filed by the parties, though held that the order passed on 25.08.2003, modifying the earlier order dated 08.07.2003, was not legal, directed the Deputy Commissioner, competent authority to determine whether the building to be retained or building to be returned to the owner, dismissed the writ petition.

(xvi) As against the said order passed by the Single Judge, the petitioner-(sic)

6. Mr. Binod Kanth, learned senior counsel appearing for the appellant, beside assailing the order of learned Single Judge, has brought to the notice of this Court various subsequent events which have taken place after filing of this appeal in order to show the serious prejudice has been caused to the petitioner-appellant which impelled him to seek for necessary direction to be issued by this Court by invoking the Article 227 of the Constitution of India to the Principal, Ranchi Women's College, Ranchi to relinquish and handover the property in favour of the petitioner-appellant in consonance with the order of de-requisition passed by the Deputy Commissioner.

7. The crux of the submissions made by the learned senior counsel appearing for the appellant are as follows:

(A) (i) There is no dispute in the ownership of the petitioner-appellant raised either by the Government or by the Principal, Ranchi Women's College, who is occupying the property. The allotment order was passed by the Deputy Commissioner in the year 1958 with the consent of the previous landlord and the previous landlord had been receiving rents from the Principal of the College. After the petitioner-appellant purchased the said property from the previous owner, the petitioner-appellant has been receiving rent from the College. Therefore, the learned Single Judge cannot hold that the dispute of title can be resolved only by the Civil Court, as the Civil Court cannot be asked to decide the question of title of right or possession over the property in question of the petitioner-appellant as the allotment order can be cancelled by the Deputy Commissioner also, who issued the same.

(ii) The learned Single Judge without appreciating the circumstances (sic) the fact that the jurisdiction of the Civil Court is barred u/s 19 of the Act 30 of 1952, has wrongly dismissed the writ petition merely by observing that under Article 226 of the Constitution of India, High Court could not determine right, title and possession and it can be decided by the Civil Court alone.

(B) This Appellate Court may consider the subsequent events that took place in this matter to pass the suitable orders to secure the ends of justice.

(i) Learned Single Judge passed an order on 20.12.2005 dismissing the writ application with an observation that the Deputy Commissioner and the authorities concerned should determine the question of retaining the properties with themselves or handing over the property to the owner. In pursuance of the said order, the Deputy commissioner, Ranchi passed an order on 04.04.2006 de-requisitioning the property and directing the Principal, Ranchi College to relinquish and hand over the possession to the owner, the petitioner-appellant. This order has not been given effect to as the authorities have not been allowed to execute the order by the College authorities.

(ii) The Principal, Ranchi Women's College, thereupon, has chosen to file a suit before the Munsiff, Ranchi praying for setting aside the said order and seeking for permanent injunction even though Civil Court jurisdiction is barred. This has been wrongly entertained by the Civil Court.

(iii) As a matter of fact, in the counter filed by the Principal, Ranchi College in the earlier proceeding, the college has taken a specific (sic) Taking contrary stand, Principal of the College has now rushed to the Civil Court and filed a Suit.

(iv) On coming to know of this, the petitioner-appellant filed an application before the Munsiff praying for rejecting the plaint under Order 7 Rule 11 read with Order 14 Rule 2 of the CPC as the suit itself is barred u/s 19 of the Act 30 of 1952. But this application was wrongly rejected on 14.11.2006 by the Civil Court.

(v) Challenging the same, the petitioner-appellant filed a writ petition numbered as W.P.(C) No. 7495 of 2006. The learned Single Judge of this Court by order dated 10.05.2007 remitted the matter once again to the Munsif for deciding the question raised by the petitioner-defendant as well as other defendants. Despite that, learned Munsif rejected the said prayer by the order dated 21.07.2007 holding that preliminary issue can be decided only after adducing the evidence by the parties.

(vi) These facts would certainly shock the conscience of the Court in the light of the fact that a legitimate owner whose house was requisitioned to meet the exigencies of emergency, is deprived of using the same for the past 70 years. In these circumstances and in the light of the subsequent events, suitable relief may be granted by this Court in this letters patent appeal to enable the petitioner-appellant to get back the possession from the Principal, Ranchi Women's College.

8. The learned Counsel for the respondents, in justification of the impugned order of learned Single Judge, submitted that order impugned is valid one and since in pursuance of the said order, the parties are agitating (sic)

9. We have carefully considered the submissions made by the learned Senior Counsel appearing for the appellant and respondents and have given our anxious consideration to the rival contentions.

10. At the outset it shall be mentioned that the request of learned senior counsel appearing for the appellant praying for the reliefs referred to above cannot be said to be within the scope of this Court in this letters patent appeal.

11. While we are concerned in this letters patent appeal only with reference to the legality of the order of learned Single Judge, the impugned order, we have to be conscious that we cannot travel beyond the scope of this appeal by referring to the various issues which were not the issues raised before the Single Judge.

12. As indicated above, learned Single Judge, though dismissed the writ petition on the ground that the question of title and other rights can be gone into by the Civil Court alone, has specifically held that the Deputy Commissioner, the competent authority can decide and determine as to whether the building in question could be retained or relinquished in favour of the owner. The relevant portions of the order are as follows:

So far as the question as to who has the right, title or possession over the land or the question of restoration of possession cannot be determined by the authorities rather it can only be determined by a civil court of competent jurisdiction. However, it is open for the State authorities to determine whether the requisition, earlier made, is to be cancelled and thereby the building is to be returned to the owner.

In the circumstances, this Court is not inclined to give any finding in one or other way. The competent authorities of the State may determine whether they want

to issue any order of de-requisition or want to retain the building.

13. Therefore, the above observation would indicate, though the learned Single Judge held that when there is dispute with regard to title or right or possession raised by any authority, it is the Civil Court alone to decide the same, and however, directed the Deputy Commissioner, the (sic)

The learned Single Judge further observed that the order passed by the Deputy Commissioner on 08.07.2003 cannot be said to be an order of de-requisition in the absence of notification.

The learned Single Judge has further held that the order passed on 25.08.2003 modifying the earlier order dated 08.07.2003 by the Deputy Commissioner, holding that the Secretary of the Human Resources Development Department and the Vice Chancellor, Ranchi University will decide about the question, is not legal.

14. Thus, it is clear that it was specifically indicated in the order of the Single Judge that when there is no dispute with reference to the title or any other right, it is for the Deputy Commissioner to decide the question of de-requisition and relinquishment.

15. The learned Senior Counsel for the appellant pointed out that various subsequent events took place subsequent to the filing of the appeal. These events would indicate that the order impugned passed by the learned Single Judge has been acted upon both by the petitioner-appellant as well as by the State authorities.

16. The annexure 20 filed along with the supplementary affidavit filed by the petitioner-appellant for showing the subsequent events would reveal that pursuant to the order dated 20.12.2005 passed by learned Single judge in W.P. (C) No. 4955 of 2004, the petitioner-appellant filed a detailed representation to the Deputy Commissioner requesting for de-requisitioning the property in question and returning back the same to its original owner, the petitioner-appellant as directed by the learned Single Judge.

17. On the basis of the said representation and in the light of the request made by the petitioner-appellant, on the strength of the order dated (sic) whether they may issue any order of de-requisition or retain the building, the Deputy Commissioner, the competent authority, after having carefully considered the various points raised in the representation and also by way of acting upon the order of learned Single Judge, passed an order dated 04.04.2006 releasing the property in question by way of de-requisition with effect from 4th April, 2006. The operative portion of the said order is as follows:

Now, on the basis of the facts stated above and acting under the provisions of Sub-section (2) of Section 6 of the said Act of 1952 an order is being issued hereunder to derequisition the said property and to return the same to its rightful owner.

ORDER

The property situated on Ho/ding No. 587 pertaining to Revenue village Hatma, M.S. Plot No. 1690, commonly known as "Katras House" shall be deemed to have been requisitioned u/s 23 of "The Requisitioning and Acquisition of Immovable property Act of 1952" with effect from 25th January 1952 until further orders of the Competent Authority. And whereas the Competent Authority has now decided that the said property shall be released from requisition with effect from 4th April 2006.

Now therefore, in exercise of the powers conferred by Sub-section (2) of Section 6 of the Requisitioning and Acquisition of Immovable Property Act 1952, (No. 30 of 1952), I, The Deputy Commissioner, Ranchi, being to competent authority, Specify M/s. roy Estate, represented by Capt. Uma Shankar Roy, as the person to whom possession of the said property shall be given.

SCHEDULE

All that piece and parcel of land including building situated on Holding No. 587 pertaining to Revenue village Hatma, M.S. Plot No. 1690, commonly known as "Katras House", Circular Road, Ranchi.

18. The above order clearly indicates that the final order has been passed by the Deputy Commissioner in pursuance of the order impugned passed by the learned Single Judge and also in the light of the detailed representation made by the petitioner to the competent authority, the Deputy Commissioner on the strength of the order of the Single Judge of this Court.

19. Therefore, it is clear, the order of learned Single Judge has been acted upon by accepting the same by both the petitioner-appellant and also by the competent authority of the State. (sic) Judge in pursuance of which the petitioner-appellant obtained the favourable order from the competent authority.

21. One more important aspect, which is to be noticed in this context from the details of the subsequent events as narrated in the supplementary affidavit filed by the petitioner-appellant is the pendency of the civil suit which has been filed by the Principal, Ranchi women's College challenging the order dated 04.04.2006 passed by the Deputy Commissioner.

22. It is strenuously argued with all vehemence by the learned senior counsel for the appellant that the Civil Court has committed a serious error in entertaining the suit filed by the Ranchi Women's College even though the civil suit is barred u/s 19 of the Act 30 of 1952.

23. It is also further argued that the Principal, Ranchi Women's College who had taken the stand earlier that Civil Court has no jurisdiction has now taken a contrary stand in this suit by stating that the Civil Court alone will have a jurisdiction and, therefore, she has right to go to civil Court to decide about her rights of possession.

24. While considering this submission, two factual aspects have to be noticed:

(i) The previous owner himself in the year 1995 filed a suit for eviction against the Ranchi Women's College and the same was allowed to be dismissed for default.

(ii) After the present suit in Title Suit No. 134 of 2006 filed by the College was entertained by the learned Munsif at Ranchi, the petitioner-appellant, who is one of the defendants, entered appearance before the Civil court and filed a written statement. Besides that, the petitioner-appellant also filed an application under Order 7 Rule 11 of the bar as a preliminary issue and reject the plaint.

25. The defendants No. 2 and 3, who are the Government authorities, also filed a written statement raising the point of the bar of the jurisdiction of the Civil Court.

26. This application was heard by learned Munsiff, who, in turn, rejected the prayer by the order dated 14.11.2006.

27. Challenging the same, the petitioner-appellant filed writ petition before this Court being W.P.(C) No. 7497 of 2006.

28. Learned Single Judge of this Court, noticing that similar applications filed by other defendants were also pending before the Civil Court, by order dated 10.05.2007 remitted the matter directing the learned Munsiff to decide the applications along with other applications with reference to the maintainability of the suit. The order dated 10.05.2007 of the learned Single Judge reads as follows:

5/10.5.2007. Heard the parties for final disposal.

Petitioner has challenged the order dated 14.11.2006, passed by the learned Munsif, Ranchi in Title Suit No. 134 of 2006, rejecting petitioner's application under Order 14, Rule 2 and Order 7, Rule 11 C.P.C.

Mr. V. Shivnath, appearing for the petitioner, submitted that similar petitions filed by the other defendant Nos. 2 and 3 are also pending, which may also be disposed of on their own merits, without being influenced by the said order.

Mr. Manjul Prasad, appearing for respondent Nos. 1 and 2 and Mr. A.K. Srivastava, appearing for respondent Nos. 3 and 4 have got no objection to such prayer.

In the circumstances, the plaintiff's should file their rejoinder to the said petitions filed on behalf of Defendant No. 2 and 3, if not already filed, within two weeks from today. The learned Munsif will consider the said petitions on their own merits and pass orders in accordance with law after hearing the parties as early as possible and preferably within six weeks from today without being influenced by the order passed on 14.11.2006.

With these observations and directions, this writ petition is disposed of.

29. This would indicate that the petitioner-appellant raised the point of jurisdiction before the Civil Court itself and aggrieved by the order of rejection by the Civil Court, the petitioner-appellant chose to file writ petition (sic) petitioner-appellant as well as applications filed by other defendants and to decide the applications on their own merits after hearing the parties uninfluenced by the earlier order passed by the Munsif on 14.11.2006.

30. Now it is pointed out in the supplementary affidavit that in pursuance of the above order, the learned Munsif again heard those applications and dismissed the same by the order dated 21.03.2007.

31. It is also noticed that another application has been filed by the petitioner-appellant before the same Court for review of the order dated 14.11.2006 and the same is pending.

32. All these things would indicate that subsequent to the impugned order passed by the learned Single Judge dated 20.12.2005, much water has flown under the bridge.

33. Admittedly, the order which has been passed by the Deputy Commissioner in favour of the petitioner-appellant in pursuance of the order impugned passed by the learned Single Judge is being challenged by the College authorities before the Munsif Court at Ranchi and the same is pending.

34. As indicated in the supplementary affidavit, the petitioner-appellant, as defendant in the suit, chose not only to file the application before the Civil Court to reject the plaint but also filed written statement.

35. As indicated above, the learned Munsif had an occasion to deal with the question of jurisdiction twice and rejected the prayer of the petitioner-appellant on the ground that the preliminary issue cannot be decided at that stage without any evidence.

36. So, the petitioner-appellant, having chosen to act upon the order of Single Judge by approaching the Deputy Commissioner seeking for relinquishing; having obtained the order in their favour from the Deputy (sic) the Principal, Ranchi Women's College before the Civil Court on coming to know that the Civil Suit has been filed against the said order; having challenged the order of the Civil Court, dismissing their petition, in another writ petition, which has been considered and disposed of directing the Munsif to dispose of the applications on merits and on the basis of the said order, having gone to the Civil Court again and argued the matter with reference to the preliminary issues and obtained order which is not in their favour, cannot now be allowed to raise very same issues in this letters patent appeal which has been filed to assail the order impugned dated 20.12.2005, especially when it has been substantially acted upon by the parties.

37. In our view the remedy for the petitioner-appellant is elsewhere and certainly not before the Division Bench in this letters patent appeal.

38. When the petitioner has chosen to assail the jurisdiction of the Civil Court in the Civil Court itself and challenged the order of the Civil Court before the learned Single Judge in the recent writ petition being W.P.(C) No. 7497 of 2006, the petitioner has to pursue its remedy in the same forum in accordance with law.

39. In our opinion, it is for the Civil Court to decide the jurisdiction in the application filed by the defendant under Order 7 Rule 11. If the Civil Court has refused to decide the preliminary issue even at the preliminary stage it is for the petitioner to approach the proper forum to assail the said order, as has been done earlier by filing a writ petition which has been disposed of.

40. Certainly, this Court will not go into the validity of the order of the Civil Court rejecting the prayer of the petitioner or validity of the order passed by learned Single Judge directing the Civil Court to decide the issue (sic) pursue its remedy only in appropriate forum. However, we make it clear that any observations made by the Single Judge dated 20.12.2005 or any of the observations made by this Court relating to the jurisdiction of the Civil Court would not, in any way, affect the jurisdiction of the Civil Court to decide about its jurisdiction to entertain the suit as it is open to the Civil Court to decide the same with reference to the question of bar u/s 19 of the Act 30 of 1952 without being influenced by any of those observations.

41. In view of the above reasons, we do not find any valid ground to admit this appeal. This appeal is, accordingly, dismissed.

Amareshwar Sahay, J.

42. I agree.