
(2013) 07 JH CK 0081

In the Jharkhand High Court

Case No : Writ Petition (C.) No. 5634 of 2012

Sitaram Khandelwal and Another

APPELLANT

Vs

Ranchi Municipal Corporation and Others

RESPONDENT

Date of Decision : 08-07-2013

Acts Referred:

Jharkhand Municipal Act, 2011 — Section 387, 387(7)

Citation : (2013) 3 JLJR 308

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Indrajit Sinha, for the Appellant; Sumeet Gadodia and R.R. Nath, for the Respondent

Final Decision : Allowed

Judgement

Aparesh Kumar Singh, J.—The petitioners, who are tenants of the private respondent, challenged the letter No. 908 dated 15.3.2012 issued by the respondent No. 2, Deputy Chief Executive Officer, Ranchi Municipal Corporation, whereunder permission has been accorded u/s 387(7) of the Jharkhand Municipal Act, 2011 for demolition of the building standing in Mouja Chadri, M.S. Plot Nos. 1526, 1527, 1528, 1529, 1530 and 1531 in the district of Ranchi. The petitioners' case is that they are tenants of the private respondents since 1968. It is the contention of the petitioners that the private respondent has now resorted to demolition of the building by taking recourse to the provisions provided under Municipal Act, 2011 by getting it declared to be a dilapidated building, although the requirements of Section 387 of the said Act stipulate notice upon not only the owner of the building but also any other person having interest in the building whether lessee or otherwise to show cause as to why the demolition of the building should not be carried out. It is submitted that the impugned order has been issued without any notice to the petitioners.

2. The respondent-Municipal Corporation, on the other hand, has stated that the house in question is in a dilapidated condition and permission was sought for its

demolition. The house in question was inspected by Engineer of the Corporation and Annexure-D to the counter affidavit dated 20.1.2012 is the inspection report of the Junior Engineer of the Corporation. As per the said report, it has been found that the building is 70-75 years old and in a dilapidated condition. Several cracks have been found in the walls and vertical cracks have also been found showing that the building is in falling condition and structure of the building has also suffered cracks. The building has been constructed by using bricks and wooden logs (Sahtir) and the wooden part is being found to have decayed. The part portion of the house has also been found to have fallen. In these circumstances, the building could be declared as a danger building.

3. Counsel for the Corporation submits that notices were issued to the private respondent as also the petitioners. However, the petitioners have not chosen to respond the same and approached this Court.

4. Even before the inspection was carried out, the petitioners as well as private respondent were noticed to submit their response for taking informed decision in the matter. The petitioners, however, failed to give show cause. Therefore, the impugned has been passed taking into account the dangerous condition of the building as reported by Junior Engineer of the Corporation.

5. The private respondent has also appeared and filed his counter affidavit. An interlocutory application has also been filed for vacating the interim order dated 1.10.2012, which according to him, was passed ex parte while issuing notices to the private respondent.

6. It is contended on behalf of the private respondent that the sanctioned plan of the building is dated 25.5.1927 issued by the office of Municipal Commissioner, Ranchi and the construction had been undertaken immediately thereafter. Now the building has become dilapidated and therefore, steps had been taken to demolish it invoking the provisions of Municipal Act, 2011. It is further submitted that the petitioner is trying to delay the whole process though there are serious apprehension of threat of life and property if the building falls down during the monsoon season because of heavy rain. It is, therefore, submitted that the impugned order is wholly just and proper in the eye of law, may not be quashed and the interim order may be vacated.

7. I have heard counsel for the parties and gone through the relevant materials on record including the provisions of law relied upon by the parties.

8. The building in question, as per the statement of the private respondent, appears to have been constructed some time in year 1927 when the building plan was accorded by the then competent authority of the Municipal Corporation, Ranchi. The report of the Junior Engineer, which has been brought on record by way of Annexure-D to the counter affidavit, gives inkling that the building is suffering from cracks and found 70-75 years old. However the provisions of Section 387 of the Municipal Act, 2011 require proper notice not only to the owner but also the lessee or mortgagee or any other persons, who may have

interest in the building. It, however, does not appear convincingly that the notice has been properly served to the petitioner to respond to the impugned action.

9. In these circumstances, since it appears that the impugned order has been passed without proper opportunity of hearing to the petitioner, the same is quashed. The respondent-Corporation and private respondent, however, submit that the petitioner should be directed to appear before the respondent-Corporation on a particular date, as he is avoiding service of notice.

10. Counsel for the petitioner, however, refutes the same and submits that petitioners will present on any date as may be fixed by this Court within a reasonable time before the competent authority of the Corporation.

11. In these circumstances, the petitioners will appear before the competent authority/Chief Executive Officer of the Ranchi Municipal Corporation within a period of two weeks, preferably on 19.7.2013 and submit their show cause in response to the notice, which is dated 7.1.2012, Annexure-C to the counter of the Corporation, which has already been brought on record. The competent authority of the Municipal Corporation thereafter shall take an informed decision in the matter in accordance with law after hearing the noticee as also the land owner within a period of four weeks thereafter.

12. This writ petition is accordingly allowed. I.A. No. 3492 of 2013 also stands disposed of.