
(2008) 05 JH CK 0005
In the Jharkhand High Court

Thakur Chandrabhushan Singh and Another	APPELLANT
Vs	
State of Jharkhand and Others	RESPONDENT

Date of Decision : 01-05-2008

Acts Referred:

Citation : (2008) 3 JCR 572

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

N.N. Tiwari, J.—The petitioner No. 1 is the Secretary of Deep Co-operative Housing Construction Committee. The Khasmahal land pertaining to Plot No. 605 was allotted to the said Committee for the purpose of construction of houses. The applications were made for sanction of the building plan. The plan was approved, so far as ground floor is concerned. The application for sanction of plan for further construction was made by the petitioners as far back as in the year 1989, which is still pending even after lapse of about 19 years.

2. The Deputy Collector Land Reforms, Dhalbhum, Jamshedpur by his Letter No. 3365 dated 21st December, 2006 issued notice to the petitioners asking them to appear before him on 8th January, 2007 with relevant documents. In the said letter, it was mentioned, that failing appearance, appropriate action under the provisions of Khasmahal shall be taken against them. The petitioners appeared on 8th January, 2007 and submitted their reply, claiming that they are the lease holders of the land and in the lease agreement, there was no provision for any such enquiry.

3. Grievance of the petitioners is that after submission of their reply on the date fixed i.e., on 8th January, 2007, the same was not considered and on the same day, the Deputy Commissioner, Jamshedpur issued an order, directing the Officer-in-charge. Persudih Police Station to ensure stoppage of construction work. It has been submitted that during the pendency of the proceeding in which the

petitioners have already appeared and filed their reply and the same is still under consideration, any observation of the Deputy Commissioner regarding the nature of the construction as also direction to the police to ensure stoppage of the construction is wholly arbitrary, unfair and unjust and the same is not sustainable.

4. The respondents have contested the writ petition. A counter affidavit has also been filed, stating, inter alia, that the impugned letters dated 21st December, 2006 and 8th January, 2007 are justified and in terms of the agreement between the parties in the lease agreement, the conditions were led allowing construction in accordance with the sanctioned plan, but the petitioners were proceeding with the construction work without any due sanction or approval of the plan. The said act is illegal and as such, the petitioners were issued notice to show cause and were directed to produce the documents. They were also directed to stop the construction work by letter dated 21st December, 2006 (Annexure 5), but inspite of the same, they did not stop the construction work. In that circumstance, the impugned order dated 8th January, 2007 (Annexure 7) was issued, directing the police to ensure immediate stoppage of construction work. There is, thus, no illegality or arbitrariness in the impugned order.

5. I have heard learned Counsel for the parties and perused the facts and materials on record.

6. From Annexure-5, it appears that the petitioners were asked to appear and produce the documents before the Deputy Collector Land Reforms, Dhalbhum, Jamshedpur. Pursuant to the said letter, the petitioners appeared on 8th January, 2007 and submitted their reply. The proceeding was, pending before the Deputy Collector Land Reforms, Dhalbhum, Jamshedpur. The said authority, after submission of the petitioner's reply, was yet to consider and pass appropriate order on merit. In the mean-while, the Deputy Commissioner, East Singh-bhum, Jamshedpur issued impugned order dated 8th January, 2007 (Annexure 7), observing that the petitioners were proceeding with the construction work without getting the plan approved by the competent authority and the same is illegal. The said order has been passed by the Deputy Commissioner without giving any notice or opportunity of hearing to the petitioners and during the pendency of the 3proceeding, in that regard, before the Deputy Collector Land Reforms. The Deputy Commissioner is the higher authority and in the face of such observation without giving any opportunity of hearing to the petitioner shall have a prejudicial effect and the Deputy Collector Land Reforms in presence of the said order may not be able to consider the petitioner's reply and documents independently. Since the reply has been submitted before the Deputy Commissioner Land Reforms, the Deputy Commissioner 2had no occasion to go through the reply and to consider the stand taken by the petitioners.

7. From the impugned order dated 8th January, 2007 passed by the Deputy Commissioner, it is evident that he has made observation regarding illegal construction without any basis whatsoever. He found the said construction, while he was on round. The said order is without any legal basis and the same has got

no cogent foundation. The order has also been passed without giving any prior notice or opportunity of hearing to the petitioners.

8. In view of the above, I find no justification to uphold the impugned order dated 8th January, 2007 (Annexure 7). The same is vitiated on account of non-observance of the rules of natural justice and is, hereby, quashed. This writ petition is allowed.

So far as the proceeding before the Deputy Collector Land Reforms, Dhalbhum, Jamshedpur respondent No. 4 is concerned, the petitioners have already appeared and filed their reply and they are at liberty to produce the relevant documents before the said respondent, who shall consider the petitioner's reply and documents, if any, produced before him and pass appropriate order, in accordance with law, after giving opportunity of hearing to the petitioners.