
(2011) 04 JH CK 0073
In the Jharkhand High Court
Case No : W.P (C) No. 848 of 2011

Union Club

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 20-04-2011

Acts Referred:

Citation : (2011) 3 JCR 41 : (2011) 8 RCR(Civil) 1837

Hon'ble Judges : Bhagwati Prasad, C.J;Prakash Tatia, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Prakash Tatia, J.—Heard learned Counsel for the Petitioner.

2. The Petitioner club has come up before this Court in a writ petition claiming rights under a lease and its subsequent two renewals. A question was raised before this Court whether there was any lease at all? The original was never produced by the Petitioner. On being asked where is the original, the Petitioner showed inability to produce the original lease deed. The State was asked to investigate as to whether there was ever any original lease. The State has come up after thorough investigation that the lease which is being claimed to be in existence has not found its existence in the Registrar's office of the District Dhanbad as well as Purulia (West Bengal) which was the original district for Dhanbad. Therefore, the existence of the original lease deed, according to the government's reply, is not only a doubtful proposition but it has not found its place anywhere in the registers of the office of the Registrar for registering the lease. Therefore, the very question whether the Petitioner was ever granted a lease in first place is a doubtful question and the Petitioner's case is based on a copy of the original lease deed which has been supplied by the Petitioner to the Respondent State and the State has filed the document on record showing that this kind of document has been produced by the Petitioner before the State and this kind of document has never been registered either in Dhanbad or in Purulia. Thus, mere existence of the original lease is a doubtful proposition, according to

the parties themselves and the learned Counsel for the Petitioner, on the strength of his arguments, urged that since there are extensions, it should be presumed that there was a lease in existence. No such presumption can be raised when the very existence of the original is doubtful because such presumption would only be available if there is a semblance or hint that the original was ever there. The very existence of the lease in favour of the Petitioner is doubtful proposition.

3. In exercise of jurisdiction under Article 226 we do not think that this Court would ever come to rescue the Petitioner who want to establish a fact which may be non-existent but may be established or tried to be established by adducing evidence and for that, forum is otherwise and not a writ petition under Article 226. The claim of the Petitioner that he has been paying rent to the District Board or Zila Parishad, suffice it to say mere payment of rent to the statutory authority would not clothe the Petitioner with the right of being a lessee because the statutory authorities, by mere acceptance of rent, cannot create a lease. They are under obligation to follow the law as has been indicated by the learned Counsel himself that under 1993 Zila Parishad Act under Sections 78 and 79 there are provisions where Zila Parisha can create a lease but such lease having not been created, by mere acceptance of rent it cannot be said that the Petitioner can be converted into a holder of a lease and in that view of the matter if the Petitioner does not, on the basis of the documents produced before us, have a definite conclusive title in his favour then it can be said that he is holding the possession illegally and he is well known canon of law. Under Article 226 an illegality cannot be perpetuated since an illegal possession cannot be protected by seeking a writ. This Court feels that the Petitioner has chosen a wrong forum by coming to this Court.

4. The cases relied upon by the learned Counsel for the Petitioner show that those who are in possession of such titles which have some sanctity of law should not be dispossessed by an executive feat. In this regard-the Petitioner has relied on a case reported in State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others, wherein the Hon"ble Supreme Court has held in paragraph 30 that the lesser has no right to resume possession extra-judicially by use of force. This case speaks in itself because there has to be a lessee before the law laid down in this case is applied. In this case the Hon"ble Supreme Court has held in paragraph 28 that accordingly, we hold that the question whether the purported forfeiture and cancellation of the lease were valid or not should not have been allowed to be agitated in proceedings under Article 226. Such questions have been barred to be agitated under Article 226 and the very case of the Petitioner is based on the disputed question of facts, therefore, this case has no application.

5. The Petitioner further relied on a case reported in Samir Sobhan Sanyal Vs. Tracks Trade Pvt. Ltd. and others, wherein it has been held that a person in possession under an agreement was held to be not required to be dispossessed

summarily. Here again, there is no agreement. There is a doubtful lease rather, a non-existent lease which has been renewed, may be legally or illegally. That is a dispute which cannot be decided in a writ jurisdiction.

6. Another case relied upon by the learned Counsel is State of West Bengal and Others Vs. Vishnunarayan and Associates (P) Ltd. and Another, Here again in paragraph 11 the learned Counsel emphasizes that a lessee cannot be dispossessed by an executive feat. We are afraid that as per the reasoning's recorded hereinabove, the Petitioner cannot be held to be a lessee at all. In view of the disputed question of facts, this case has no application.

7. The learned Counsel has further relied upon a case decided by the Hon''ble Supreme Court reported in Meghmala and Others Vs. G. Narasimha Reddy and Others, in which in paragraph 46 the Hon''ble Supreme Court has held that even a trespasser cannot be evicted forcibly. There cannot be any dispute about this that any trespasser cannot be evicted without due process of law. Here we find on record that the Petitioner was given notice to vacate the premises. Therefore, he was not without notice that he is to be dispossessed from the land in question. The notice started to be given to the Petitioner right from 2009. Thus, the Petitioner was under notice. In any case, we do not find that there was any valid lease which the Petitioner has failed to produce and the State Government has come up with a definite answer before us that no lease deed was ever registered with the concerned Registrar. This reveals that the renewals of lease were made either by tacit connivance of the officials who presumed that instead of granting a lease afresh, for reasons best known to them, they took resort behind such lease which is non-existent.

8. In view of the aforesaid fact, we find that there are disputed questions of fact which cannot be decided under Article 226. Under Article 226 an illegality cannot be perpetuated since an illegal possession cannot be protected by seeking a writ. We do not think that this petition is liable to be entertained by this Court.

9. This petition is accordingly dismissed.