
(2019) 01 JH CK 0029
In the Jharkhand High Court
Case No : Writ Petition (C) No. 4343 Of 2016

Vinay Prakash Mishra

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 11-01-2019

Acts Referred:

Constitution Of India, 1950 — Article 226, 227

Citation : (2019) 01 JH CK 0029

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

Advocate : Kundan Kr. Ambastha, Jayant Franklin Toppo, Rajiv Ranjan

Final Decision : Dismissed

Judgement

1. Learned counsel for the petitioner, at the outset, seeks leave of this Court to make necessary correction in the brief and submits that due to inadvertence the provision conferred to this Court under Article 227 of Constitution of India has been invoked in place of Article 226 of Constitution of India.
2. Learned counsel for the petitioner is permitted to make necessary correction in the brief in course of the day.
3. This writ petition is against the judgment dated 30th June, 2016 passed in Civil (Misc.) Appeal No.10 of 2016 whereby and whereunder the order passed by State officer under the provision of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (for short hereinafter referred to as 'of the Act, 1971') dated 19.03.2016 in Case No.A/E-78 of 2003 has been refused to be interfered with.
4. The case of the petitioner is that by virtue of deed of partnership entered into with the Bokaro Steel City Central Consumers Co-operative Store Ltd. and M/s Classic Fashion Maker Prop. of Vinay Prakash, petitioner is in possession of the aforesaid shop, therefore, he is having valid right to occupy the said shop. He submits that the aforesaid complex has been leased in favour of Bokaro Steel

City Central Central Consumers Co-operative Store Ltd. and by virtue of the said lease deed the said shop has been allotted in favour of petitioner by the said Co-operative Store Ltd.

5. A proceeding under the provision of the Act, 1971 has been initiated by the State officer but the State officer who had issued the notice having been transferred, another State officer has been appointed but hearing was concluded by the predecessor in the office but the order has been passed by the successor in office and therefore proper appreciation cannot be said to be made on the basis of the principle that if any lis is being heard by incumbent, it is to be answered by the said incumbent and if the successor in office is assuming the office in consequence of transfer it is the duty of the successor in office to provide an opportunity of hearing to the applicant for better appreciation of the issues before taking final decision but having not done so the order passed by the said officer cannot be said to be proper.

6. The petitioner, being aggrieved with the order passed by the State officer on the aforesaid ground has preferred appeal before the District Judge under the provision of the Act, 1971 but without appreciating the aforesaid aspect of the matter the appeal has been declined to be interfered with in consequence thereof, the order passed by the State officer has been affirmed.

7. Petitioner, being aggrieved with the same is before this Court by way of instant writ petition assailing the same on the ground of violation of principle of natural justice.

8. Learned counsel appearing for Steel Authority of India Ltd. has submitted that petitioner cannot claim his right on the basis of deed of partnership that too, the said deed of partnership is not registered one, therefore it is having no legal sanctity.

9. So far as contention of petitioner that the State officer who has passed order has not provided an opportunity, the same is not causing any prejudice to the petitioner since the petitioner is having no legal right to occupy the shop for the reason that there is no valid allotment order in his favour by the competent authority.

10. Upon hearing learned counsel for the parties and on appreciation of their rival submissions, the petitioner, being aggrieved with the order passed by the State officer as also the appellate authority under the provision of law is before this Court whereby and whereunder he has been declared to be unauthorised occupant under the provision of the Act, 1971. The petitioner has taken the ground of violation of principle of natural justice, as indicated hereinabove.

11. There is no dispute about the fact that the provision of natural justice is to be observed and to that effect the specific provision has been made under the provision of the Act, 1971.

12. It is admitted case of the petitioner that he has been heard by the

predecessor in office but in consequence of change, the successor in office has not provided an opportunity of hearing. It is also not in dispute that the State officer who has heard the matter is supposed to conclude the same by adjudicating it but in case of any transfer order or for any reason whatsoever the said incumbent is being transferred, the successor in office is supposed to provide an opportunity of hearing, although this concept is not applicable so far as the criminal jurisprudence is concerned, since the authority under the Public Premises Act is exercising the quasi judicial power, it is supposed to be followed but now it is to be seen that whether on this ground any relief can be granted to the petitioner.

13. It is also not in dispute that the principle of natural justice is not having straight jacket formula rather it depend upon the factual aspect in dispute. The petitioner's sole case is that he is claiming his right on the basis of deed of partnership as contained in Annexure-1.

Admittedly the said deed of partnership is not a registered one, hence the same is having no legal sanctity under the provision of Indian Registration Act, 1908.

14. Even if the contention of petitioner is said to be correct, its consequence would be that the matter would be remitted before the State officer in question. When the petitioner is claiming his right on the basis of invalid document, what result ultimately would come?

15. The answer will be that the reason which has already been given in the judgment impugned, the said judgment will again come. So if the matter would be remitted before the authority, it will lead to empty formality and futile exercise.

16. Reference in this regard may be made to the judgment rendered in the case of Escorts Farms Ltd. v. Commissioner, Kumaon Division, Nainital, U.P. & others, reported in (2004) 4 SCC 281 wherein Hon'ble the Apex Court has held at paragraph-64 which is being quoted herein below:

"64. Right of hearing to a necessary party is a valuable right. Denial of such right is serious breach of statutory procedure prescribed and violation of rules of natural justice. In these appeals preferred by the holder of lands and some other transferees, we have found that the terms of government grant did not permit transfers of land without permission of the State as grantor. Remand of cases of a group of transferees who were not heard, would, therefore, be of no legal consequence, more so, when on this legal question all affected parties have got full opportunity of hearing before the High Court and in this appeal before this Court. Rules of natural justice are to be followed for doing substantial justice and not for completing a mere ritual of hearing without possibility of any change in the decision of the case on merits. In view of the legal position explained by us above, we therefore, refrain from remanding these cases in exercise of our discretionary powers under Article 136 of the Constitution of India."

17. In the case of Dharampal Satyapal Ltd. v. Deputy Commissioner of Central Excise, Gauhati and others, reported in (2015) 8 SCC 519 wherein their Lordships have held at paragraph-39 which is being quoted herein below:

"39. We are not concerned with these aspects in the present case as the issue relates to giving of notice before taking action. While emphasizing that the principles of natural justice cannot be applied in straitjacket formula, the aforesaid instances are given. We have highlighted the jurisprudential basis of adhering to the principles of natural justice which are grounded on the doctrine of procedural fairness, accuracy of outcome leading to general social goals, etc. Nevertheless, there may be situations wherein for some reason-perhaps because the evidence against the individual is thought to be utterly compelling- it is felt that a fair hearing "would make no difference"- meaning that a hearing would not change the ultimate conclusion reached by the decision-maker."

18. In view thereof, the contention raised by the petitioner and applying the ratio aforesaid the contention is not worth to be considered and as such this Court decline to interfere with the impugned order, hence writ petition is dismissed.

19. Learned counsel for the petitioner has submitted that the shop under the premises in question is vacant and they are making allotment on the basis of lease. If that being so, the competent authority is directed to consider the case of petitioner and if he is found to be eligible on the basis of the process initiated by the competent authority of Steel Authority of India Ltd.

20. Accordingly, this writ petition stands dismissed.