

Md. Sahjad Vs. State of Bihar and ors.

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Court : Patna

Decided On : Jan-10-2000

Judge : Ashok Kumar Ganguly, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 144 and 188

Appeal No. : C.W.J.C. No. 7783 of 1999

Appellant : Md. Sahjad

Respondent : State of Bihar and ors.

Advocate for Def. : Rajiv Nandan Prasad, Adv. and V.N. Singh, Govt. Pleader 9

Advocate for Pet/Ap. : Md. Kamaluddin, Adv.

Judgement :

Ashok Kumar Ganguly, J.

1. Heard counsel for the parties.

2. This writ petition has been filed for quashing order dated 5-8-1999 and 6-8-1999 issued by the Executive Magistrate, Madhupur contained in Annexures-1 and 1/A. By those orders, the Executive Magistrate has directed respondents Nos. 3 to 6 to remove the petitioner by 10-8-99 from Ashanshol Muslim Hotel and hand over its possession to respondent No. 7.

3. From the case made out in the writ petition it will appear that the father of the petitioner had been permitted by respondent No. 7 to run a Hotel in the name and style of 'Ashanshol Muslim Hotel' in the premises in question. Petitioner's case is that he was regularly paying rent Badri Sah, respondent No. 7. The petitioner has, of course, not filed any document in support of his claim that he has been regularly paying rent to respondent No. 7.

4. Be that as it may, the petitioner has relied upon certain documents to show that the said Hotel was registered in the name of 'Ashanshol Muslim Hotel', Madhupur under the provisions of Bihar Shops and Establishment Act, 1953 and the professional tax was also paid in the name of Ashanshol Muslim Hotel to the Madhupur Municipality and the registration certificate was given and the name of Proprietor was shown as Md. Nayeem, the father of the petitioner. The said Md. Nayeem, father of the petitioner, died four year back and after his death, the petitioner is running the Hotel in question by paying rent to respondent No. 7.

5. The positive case of the petitioner is that respondent No. 7 has not filed any eviction suit under the Bihar Building (Lease, Rent and Eviction) Control Act for his eviction. Even then, the petitioner has received impugned orders dated 5-8-1999 and 6-8-1999 for vacating the said premises by 10-8-1999. The petitioner has challenged jurisdiction of the respondent No. 2 in passing impugned order as contained in Annexures-1 and 1/A.

6. In this matter a counter-affidavit has been filed by respondent No. 7. In the said counter-affidavit the stand taken is that the respondent No. 7 is a person who is physically handicapped and was allotted a stall by Madhupur Municipality in the year 1969-70 on Sardar Patel Road, Gandhi Chowk, Madhupur on annual rent of Rs. 20/- only and since the said allotment, respondent No. 7 is paying rent to Madhupur Municipality. Previously respondent No. 7 was running said Hotel in the name and style of Bihar Hindu Hotel but thereafter was changed to Ashanshol Muslim Hotel for which licence was granted by Madhupur Municipality and the said licence was renewed from time to time.

7. The case of respondent No. 7 is that the father of the petitioner was engaged in the said Hotel as Cook by respondent No. 7 and after death of his father brother of

the petitioner was engaged as cook on daily wages at the rate of Rs. 15/-. Respondent No. 7 was relying on an agreement a copy of which has been annexed to the said counter-affidavit. It has been alleged by respondent No. 7 that the petitioner forcibly obtained some signatures of the respondent No. 7 on several plain sheets of papers with the help of his muscle men and anti-social elements and got some receipts from the Municipality. But it has been admitted by respondent No. 7 that the possession of the petitioner was there in the said Hotel in 1998. It has also been stated by respondent No. 7 that some proceeding was initiated against the petitioner at the instance of respondent No. 7 under Section 144, Cr.P.C. and also under Section 188, Cr.P.C. and on the basis of those proceedings the S.D.M. Madhupur, directed the Circle Officer, Madhupur and Executive Magistrate, Madhupur, to hand over the possession of the hotel in question to respondent No. 7 with the help of police personnel in the interest of justice and pursuant to the said order the possession was handed over to respondent No. 7 on 14-8-1999. It has been admitted by respondent No. 7 that in the year 1998 he was dispossessed from the said Hotel by the petitioner.

8. In the counter-affidavit which has been filed by the State Government in this case the said case of respondent No. 7 has been repeated. It has further been stated that the petitioner is an anti social element and has created terror in the area. A criminal proceeding was initiated against the petitioner and on the basis of the proceeding under Section 144, Cr.P.C. the petitioner has been evicted from the Hotel premises and the possession of the Hotel has been handed over to respondent No. 7 by the Magistrate on 14-8-1999.

9. It is difficult, sitting in writ jurisdiction, for this Court to decide the conflicting claim and counter claim of the parties. It is, of course, true that the petitioner has not proved any document relating to his tenancy of the hotel but the connection of the petitioner's father with the said hotel cannot be disbelieved nor is it disputed that the petitioner was in possession of the said Hotel since March, 1998.

10. Assuming that the petitioner was a trespasser and he was running the said hotel in that capacity even in that case the petitioner cannot be evicted from premises in question on the basis of an executive fiat or on the basis of

proceeding under Section 144, Cr.P.C. Rule of law demands that even a trespasser has to be evicted in accordance with law. Proceeding under Section 144, Cr.P.C. is not a procedure in Law for evicting trespassers.

11. It will appear from Annexures-1 and 1/A that the orders have been passed by respondent No. 2 on a basis which has not warrant in law. This Court, has not been enlightened by the learned counsel for the respondents as under what legal authority respondent No. 2 has passed the orders both contained in Annexures-1 and 1/A. So, those two orders of Annexures-1 and 1/A are quashed.

12. This Court directs respondent No. 2 to hand over the possession of the premises in question to the petitioner within a period of a fortnight from today. This order is being passed in presence of the counsel for the respondent No. 2. Respondent No. 2 shall act on the basis of the communication to be given to him by his Advocate.

13. This Court does not, however, make any finding in respect of the claim and counter claim of either of parties. Even if the petitioner is in unauthorised possession of the Hotel premises. The respondent No. 7 has to evict him by following the due process of law. This Court, however, gives liberty to respondent No. 7 to proceed against the petitioner for his eviction and recovery of possession of the Hotel premises in accordance with law.

14. The writ petition is allowed to the extent indicated above. No costs.