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Ajai Kumar Vs. State of Bihar and ors.

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Court : Patna

Decided On : Aug-19-2005

Judge : Barin Ghosh, J.

Acts : Bihar Buildings (Lease, Rent and Eviction) Control Act, 1981 - Sections 9

Appeal No. : C.W.J.C. No. 2356 of 2001

Appellant : Ajai Kumar

Respondent : State of Bihar and ors.

Advocate for Def. : Rajni Kant Singh, Adv.

Advocate for Pet/Ap. : Kamal Nayan Choubey and Ambuj Nayan Choubey, Advs. Ram Balak Mahto, Sr. Adv.

Judgement :

Barin Ghosh, J.

1. The writ petitioner was a tenant under the respondent No. 5 of a shop room. The respondent No. 5 approached the respondent No. 2 with a request to the respondent No. 2 to remove the petitioner from the shop room in question for the purpose of effecting repairs thereto. The respondent No. 2 issued a notice to the petitioner. The petitioner responded to the notice and contended before the respondent No. 2 that the respondent No. 2 is not the competent authority to

implement the request as made by the respondent No. 5. Before the respondent No. 2 the respondent No. 5 contended that the respondent No. 2 has authority to direct removal of the petitioner from the shop room in question in terms of Section 9 of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1981. The petitioner contended before the respondent No. 2 that under Section 9 of the said Act, at the instance of the landlord, no order can be passed for effecting repairs.

2. On 12th January, 2001, the respondent No. 2 passed two orders. In the first order, the respondent No. 2 stated that in terms of the provisions contained in Section 9 of the said Act, a landlord cannot ask for assistance to effect repairs of a tenanted property. In the next order also passed on 12th January, 2001, the respondent No. 2 directed forceful removal of the petitioner from the shop room in question through the instrumentality of the local police for the purpose of effecting repairs but while doing so did not record in the order that under any provision of law he has any authority to pass any such order, despite recording that his authority to pass such an order was challenged by the petitioner by filing a written notes on arguments. Surprisingly while passing the order, the respondent No. 2 did not direct taking of inventory of the materials which were then lying in the shop room in question nor did he direct restoration of the shop room in question after repairs are done.

3. Before the respondent No. 2, as recorded in the second order passed on 12th January, 2001, it was contended by the petitioner that he is running the shop in question the same does not require any repair and that merchandise belonging to him for dealing in readymade garments are lying in the shop room in question. It is unfortunate that simply on the basis of the contention of the respondent No. 5 supported by the contention of the local police that the shop is lying closed, the respondent No. 2 did not direct taking of inventory of the goods which were lying in the shop room in question.

4. Before the writ petitioner could move this Court challenging the said order the same was implemented and the respondent No. 5 with the police force not only removed the locks fastened to the entrance of the shop room but also removed whatever was then lying thereat and thereafter started to occupy the same. As a

result, by reason of the said order, the respondent No. 5 not only evicted the petitioner from his tenanted shop room but also became owner of whatever was then lying in the shop room which belonged to the petitioner.

5. Immediately after the writ petition was filed and a copy thereof was served upon the learned counsel for the State the respondent No. 2 passed yet another order purporting to take back possession of that shop room from the respondent No. 5 on the ground that the respondent No. 5 is using the shop room in question for his own purpose and not for the purpose of effecting repairs thereto. There is nothing on record from where it would be evidenced that after allegedly taking possession of the shop room from the respondent No. 5 the respondent No. 2 made over the same to the petitioner.

6. In the counter affidavit filed on behalf of the State and the respondent No. 2 it has been shown that an inventory was prepared at the time of wrongful entry of the respondent No. 5 to the shop room in question with the assistance of police on the basis of that order of the respondent No. 2 dated 12th January, 2001, but surprisingly that has not been signed by any reliable independent witness. That inventory cannot be deemed to be an inventory prepared by a disconnected person. That is an inventory prepared by those who were directly associated with implementation of that order dated 12th January, 2001.

7. At the hearing I called upon the learned counsel appearing on behalf of the State as well as the learned counsel appearing on behalf of the respondent No. 5 to show me any provision of law in terms whereof the respondent No. 2 could pass such an order i.e. an order directing removal of a tenant from his tenancy at the behest of the landlord thereof even for the purpose of effecting repairs thereto. Learned counsel for the State as well as learned counsel for the respondent No. 5, after having an adjournment for one day to look into the law, fairly conceded that there is no provision of law in terms whereof the respondent No. 2 could pass the second order dated 12th January, 2001, in terms whereof the petitioner was evicted illegally from the shop room in question. In such view of the matter, the action complained of, being the creation of the order dated 12th January, 2001, is an ultra vires, act on the part of the respondent No. 2 for he acted beyond his

competence bestowed by law.

8. By reason of such act on the part of the respondent No. 2, the petitioner has suffered. The respondent No. 2 is accordingly liable to compensate the petitioner personally. At the same time, the respondent No. 2 acted at the behest of the respondent No. 5 and the respondent No. 5 himself took advantage of that illegal order or the ultra vires action on the part of the respondent No. 2, and accordingly is equally liable to compensate the petitioner for the loss and damages caused to the petitioner.

9. In the writ jurisdiction it will not be possible for me to ascertain the exact nature of damages suffered by the petitioner and accordingly it would not be possible for me to determine the exact amount of compensation which the respondents No. 2 and 5 are liable to pay to the petitioner. However, inasmuch as, because of such action on the part of the respondents No. 2 and 5 the petitioner has suffered at least mental agony, to that extent the damages suffered by the petitioner can be quantified and directed to be paid to the petitioner even in writ jurisdiction. I requested the learned counsel for the respondent No. 5 as to what amount of compensation his client is agreeable to pay on account of mental agony caused to the petitioner by reason of such illegal actions on the part of the respondents No. 2 and 5 to that the submission was about Rs. 25,000/-. I was happy to note that the respondent No. 5 has realised that he has done a grave injustice to the petitioner and accordingly he is agreeable to compensate the petitioner to the extent of at least Rs. 25,000/-.

10. In such view of the matter, I direct the respondent No. 5 to pay to the petitioner a sum of Rs. 20,000/- (Twenty thousand) as half of the compensation towards damages by way of mental agony suffered by the petitioner. The respondent No. 2 is equally directed to pay a sum of Rs. 20,000/- (Twenty thousand) to the petitioner on account of half of the compensation towards damages suffered by the petitioner for mental agony. The remaining damages, the petitioner shall be entitled to recover from the respondent No. 2 and 5 by filing an appropriate suit.

11. The respondent-State is directed to ensure handing over possession of the shop room in question to the petitioner forthwith in the same condition as it was

lying at the time of taking possession thereof, if not already possession thereof has been handed over to the petitioner, and to file an affidavit to that effect through the District Magistrate of the District concerned within a period of one month from today.

12. The Secretary, Personnel and Administrative Reforms Department, Government of Bihar is directed to look into the conduct of the respondent No. 2 in relation to the instant matter and to take appropriate departmental proceedings against the respondent No. 2. In the event, the decision is not to initiate such proceedings, the Secretary, Personnel and Administrative Reforms Department shall file an affidavit to that effect within one month from today.

13. Copies of the above affidavits shall be handed over to the learned Advocate on record for the petitioner simultaneously with filing of the same, and although I am disposing of this writ petition by this order, I am permitting the petitioner to apply to this Court for reviving the writ petition in the event the possession is either not handed over or departmental proceeding is not initiated.

14. The writ petition is accordingly disposed of.

15. This order will not prevent the petitioner from initiating any other proceedings if according to the petitioner any of the respondents has violated any other provision of law.

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