

**Md. Rizwan Ali Vs. Ranchi Regional Development Authority and ors.**

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**Court :** Jharkhand

**Decided On :** Jan-15-2008

**Reported in :** [2008(1)JCR426(Jhr)]

**Judge :** Narendra Nath Tiwari, J.

**Appellant :** Md. Rizwan Ali

**Respondent :** Ranchi Regional Development Authority and ors.

**Judgement :**

ORDER

**Narendra Nath Tiwari, J.**

1. In this writ petition, the petitioner has prayed for quashing the order dated 31st January, 2004 passed by respondent No. 3 in Misc. Appeal No. 7 of 1999, dismissing the appeal for default and also for quashing the order dated 18th January, 1999 passed in U.C. Case No. 178 of 1996, whereby the respondent No. 2 has directed to demolish the construction of the petitioner holding the construction as unsanctioned.

2. According to the petitioner, he is recorded tenant and the house, in question, was in existence since long and had been entered in the revisional survey record of right, published in the year 1935, The house, in question, is thus standing since several decades, since before the Jharkhand Regional Development Authority Act,

2001 came into existence. It has been stated that the petitioner has not made any construction after coming into force of the Bihar Regional Development Authority Act, 1974 and as such, there is no question of making any unsanctioned construction, as alleged by the respondents.

3. The respondents, at the instance of one Md. Ashiruddin, who is the petitioner's neighbour, wanted to disturb the petitioner's possession arbitrarily. A notice under Section 54(i) of the said Act was issued to the petitioner, asking him to show cause as to why the unauthorised construction be not demolished over R.S. Plot No. 185 of village Hirtco, Ranchi. The petitioner appeared and filed his reply to the show cause notice. It has been stated that without giving any reasonable opportunity of hearing to the petitioner, the said case was disposed of by the Vice-Chairman vide his order dated 18th January, 1999. Against the said order, the petitioner filed appeal before the Appellate Tribunal, being Misc. Appeal No. 7 of 1999.

4. For want of forum, the Bench of the Tribunal was not available for hearing on several dates when the petitioner had appeared. The petitioner could not know the date when the appeal was suddenly taken up for hearing by the Tribunal and as such could not respond to the call. In result, the appeal was dismissed for non-appearance. The petitioner, thus, was prevented from placing his case before the appellate forum due to the said reason and circumstance beyond his control.

5. Grievance of the petitioner is that the orders of the Vice-Chairman and the appellate forum have been passed without affording him proper opportunity of hearing to the great prejudice to the petitioner and for no fault on his part. The petitioner has been denied the opportunity of hearing and there is violation of principle of natural justice. The orders of the Vice-Chairman and the appellate forum are, thus, vitiated on account of non-compliance of principle of natural justice. The said orders are liable to be quashed.

6. Learned Counsel appearing on behalf of the Ranchi Regional Development Authority, on the other hand, submitted that the petitioner was given opportunity of hearing and the allegations made in the writ petition are wholly baseless. The Vice-Chairman has passed the order after giving proper opportunity to the

petitioner to file his reply. The petitioner had filed his reply in detail and he given sufficient opportunity of representation and hearing and there is no violation of principle of natural justice. Before the appellate forum, the petitioner himself was the appellant and as such, there was no question of giving him any notice of hearing. The petitioner after filing the appeal did not pursue the same properly and he remained absent for several days as also on the date fixed when the appeal was called out for hearing. Thus, the appeal was dismissed due to laches on the part of the petitioner. There is no basis for the allegations made in the writ petition.

7. I have heard learned Counsel for the parties and perused the facts and materials brought on record. Though before the appellate forum, the petitioner himself was the appellant and he is expected to pursue his appeal regularly, yet the circumstance shows that the petitioner cannot be said to be deliberately avoiding appearance in the appeal. The petitioner has brought on record the order-sheet to show that on several dates the appeal could not be taken up for hearing in spite of his appearance. The Tribunal was not sitting, as the forum was not complete. The stand of the petitioner appears to be reasonable. Since the appeal was taken up without giving him notice of the date of hearing when the forum became available, the petitioner was prevented from appearing in the appeal when the same was taken up for hearing. The petitioner was, thus, deprived of the valuable right for his not fault.

8. I, therefore, find substance in the submission of the learned Counsel for the petitioner that the petitioner has not been given opportunity of hearing before the appellate forum and there was violation of the principle of natural justice.

9. In view of the above, the order passed by the appellate forum dated 31st January, 2004 (Annexure-8) cannot be sustain and is hereby quashed. The matter is remitted to the appellate forum for fresh hearing and disposal of the appeal. The petitioner shall appear before the appellate forum on 29th January, 2008 and on that day, the appellate forum shall fix a date for hearing in his presence. If the petitioner does not appear on that date, then also the appellate authority shall fix the date and display the same on the notice board outside the Court Room. The appellate authority shall thereafter proceed with the appeal in accordance with law.

10. This writ petition is allowed in the aforesaid terms.

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