

Jethmal Vs. State and ors.

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Court : Rajasthan

Decided On : Jul-23-2009

Reported in : 2009(3)WLN249

Judge : N.P. Gupta and; Govind Mathur, JJ.

Appellant : Jethmal

Respondent : State and ors.

Disposition : Petition dismissed

Judgement :

N.P. Gupta, J.

1. The unsuccessful appellant has filed present appeal. The appellant had filed writ petition on 29.05.2000, praying for a direction to the Municipal Board to restore the status quo of the land in dispute, and the shop, as it was on 29.03.2000, just before the shop was demolished, and the petitioner's possession was disturbed, and has also claimed adequate compensation.

2. The factual averments were, that the petitioner was allotted land measuring 16 x 6 ft. on rent in accordance with law, and since then the petitioner was continuing in possession, having taken electric and water connection till 29.03.2000, on which date employees and officers of the respondents No. 2 and 3 i.e. the Municipal

Board and the Assistant Collector demolished the shop, and took away the material of the petitioner. The petitioner has produced the permission letter dt. 04.03.1968 as Annexure-2, and has produced certain demand notice about arrears of rent. It is also alleged, that the fact is that the petitioner was allotted land on rent, and he constructed shop, continued to pay rent upto 29.03.2000, till all of a sudden without prior notice the shop was demolished, and the material and the goods lying there were looted and were taken in a tractor.

3. The learned Single Judge dismissed the writ petition at admission stage, by observing that even as per averments of the writ petition the shop has already been demolished way back on 29.03.2000, therefore, this Court cannot decide disputed questions of fact involved in the matter, and without expressing any opinion about action of the respondent the petition was dismissed.

4. In this appeal a reply has been filed on behalf of the respondent No. 2, wherein it is inter alia alleged, that the petitioner was not allotted 16 x 6 ft. Land, rather he was temporarily allotted land measuring 23 x 6 and 11 x 7 ft. for putting table, bench and Kadai, and other articles on daily rental basis as he was carrying on a restaurant, but the appellant without obtaining any permission, illegally constructed permanent shop, which was illegal, and was made on the main road, therefore, the temporary licence was cancelled, and illegal construction was demolished, and road was opened for the public interest.

5. In our view, a look at Ex. 2 itself shows that this is not a permission, as pleaded by the petitioner in para-2 of the writ petition, rather it is a licence for temporary use of the government land, granted in accordance with bye-laws, for temporary occupation of the land, and projection, and recites a temporary permission to have been granted for using the land in front of his shop on monthly rental basis. Thus, it cannot be said that the land was allotted, in the manner, and for the purpose as it intended to be pleaded by the petitioner in the writ petition, and no permission has been granted to the petitioner for raising permanent construction. It is a different story that there is nothing to show that the petitioner was allotted 16 x 6 ft. of land.

6. In that view of the matter if despite having been given permission for temporary use of the land in front of his shop, contrary to it the appellant chose to raise permanent construction, and if that was demolished, it is not a case in which writ jurisdiction was required to be invoked by this Court. Thus, the learned Single Judge has rightly declined interference.

The appeal thus has no force, and is dismissed.

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