

Vishnu Modi and Ors Vs. Hemant Kumar

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Court : Jharkhand

Decided On : Nov-23-2016

Appellant : Vishnu Modi and Ors

Respondent : Hemant Kumar

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W. P. (C) No. 6279 of 2016
1. Vishnu Modi 2. Sohan Modi 3. Sunita Devi 4. Tripti Modi 5. Golu Modi 6. Jasu Modi ... Petitioners -V e r s u s- Hemant Kumar ...Respondent CORAM: - HONBLE MR. JUSTICE APARESH KUMAR SINGH For the Petitioners : - M/s Bhaiya V. Kumar, Adv. For the Respondent :- Mr. Rahul Gupta, Adv. 03/23.11.2016 Heard learned for the petitioner and the sole respondent. The order dated 28.10.2016, which records the substance of the petitioners' grievances, are being reproduced hereinunder:- Learned counsel for the petitioner submits that during the pendency of the Revision Case i.e., JBC Revision No.72/2016 before the Court of Commissioner, South Chottanagpur Division, Ranchi, filed in terms of Section 37 of the JBC Act, 2011 by the petitioner, steps are being taken for delivery of possession on the part of land lord / respondent herein. It is submitted that petitioner has also prayed for an interim stay in the Revision application, Annexure-2. The Revision application has been simply adjourned on 3 occasions and his prayer for interim protection could not be heard by the learned Commissioner, South Chottanagpur Division, Ranchi. As per the instructions of the petitioner, next date fixed in the case is 8.11.2016. Respondent however has

made prayer for effecting delivery of possession before the Court of House Controller cum Sub Divisional Magistrate, Sadar, Ranchi in M.P. Case No. 2 of 2016 (Annexure-3) wherein on 30.9.2016 respondent was directed to deposit the cost for execution and file receipt by 26.10.2016. It is further submitted on instruction that the learned House Controller has fixed 31.10.2016 as the date for delivery of possession. Petitioner would be evicted without exhausting the remedy of obtaining interim protection from the Revisional Court where he has already approached. Therefore, he has been compelled to move this Court in the present writ petition. He further submits that the interim protection may be granted from eviction till the prayer of the petitioner is considered by the Revisional Authority on the next date fixed i.e., 8.11.2016. Issue notice upon the sole respondent under Registered Cover with A/d for which requisites etc. must be filed by today, failing which, this application shall stand rejected without further reference to the Bench. Petitioner would also effect personal service of notice upon the sole respondent for which also requisites be filed by today itself. Office to issue draft of the notice on the reopening day after Diwali Vacation. On effecting personal service of notice, a supplementary affidavit be filed by the petitioner by 11.11.2016. List this case on 16.11.2016. In the meantime, status quo in respect of the suit property being vacant land and premises standing over Khata no. 93, Plot no. 170 corresponding to Holding No. 1066 under Ward No. 5(old), 23(new) measuring an area of 10985 Sq. Ft. at North Market Road, P.S. No. 205 within the District of Ranchi be maintained. The Revisional Authority may also consider the interim application of the petitioner on the next date fixed. Sole respondent has entered appearance thereafter. As per the statement made in the supplementary affidavit filed on behalf of the petitioner today, the next date fixed before the Revisional Authority i.e. Court of Commissioner, South Chottanagpur Division, Ranchi is 29.11.2016. Counsel for the petitioner has, during the course of submission, stated that even though the matter was posted on 08.11.2016 and thereafter again on 22.11.2016, but the prayer for interim protection could not be taken up as learned Commissioner, South Chottanagpur Division, Ranchi did not hold Court on either of two dates. Petitioner is apprehending delivery of possession in view of the steps being taken by the House Controller-cum-Sub Divisional Magistrate, Sadar, Ranchi in M. P. Case No. 2 of 2016. Counsel for the respondent submits that the

writ petition with the limited prayer for interim protection itself is not maintainable when the petitioner is before the Revisional Authority being aggrieved by the order of House Controller as well as Appellate Authority in JBC Revision No.72/2016. It is further submitted that writ petitioner seeks to assail the order dated 30.09.2016 of the House Controller passed in M. P. Case No. 2 of 2016, which is in the nature of execution proceeding arising out of JBC Revision No. 34 of 2015 where the respondent has succeeded. Considered the submission of the parties and relevant material facts on record. The order dated 28.10.2016 is self speaking. Petitioner could not have been rendered remediless only on account of the fact that the Revisional Authority could not take up the prayer for interim protection in the pending JBC Revision No.72/2016 before him. Indulgence was granted for limited purpose. It appears that even after the previous order, the prayer for interim protection has not been considered by the Revisional Authority for one or other reason, which need not be gone into at the moment. Be that as it may, this Court, now after hearing the parties, is of the view that the writ petition can itself be disposed of with direction to the Revisional Authority to hear the prayer for interim protection made by the petitioner in pending JBC Revision No.72/2016 on the next date fixed on 29.11.2016. Counsel for the respondent submits that he would enter appearance before the Revisional Authority on or before the next date fixed to contest the prayer. The Revisional Authority i.e. Commissioner, South Chottanagpur Division, Ranchi should consider the interim application of the petitioner in JBC Revision No.72/2016 on the next date fixed i.e. 29.11.2016 or by 30.11.2016. Accordingly, till 30.11.2016, the interim order dated 28.10.2016 passed in the instant case, shall remain operative. Thereafter, it is up to the petitioner to obtain any interim protection from the Revisional Authority in the matter in accordance with law. Let it be also made clear that there are no comments on the merits of the case of the parties. The writ petition stands disposed of accordingly. (Aparesh Kumar Singh, J.) Kamlesh/