

(2013) 09 JH CK 0017

Jharkhand High Court

Case No: Civil Review No. 61 of 2013

Zila Parishad Dukandar Sangh
and Others

APPELLANT

Vs

The State of Jharkhand and
Others

RESPONDENT

Date of Decision: Sept. 16, 2013

Hon'ble Judges: Aparesh Kumar Singh, J

Bench: Single Bench

Advocate: Manoj Tondon and Pravin Kr. Pandey, for the Appellant; Amit Kr. Verma, JC to SC (L and C), for the Respondent

Final Decision: Dismissed

Judgement

Aparesh Kumar Singh, J.

Surviving defects have been removed, as per the counsel for the petitioners.

Heard counsel for the parties.

These petitioners have sought review of the judgment / order dated 23rd November 2012 passed by this Court in WPC No. 56/2008. The said

writ petition was preferred by the petitioner no. 1 claiming themselves to be Association of Shop Keepers having 47 members. It was further

stated that the petitioner no. 1 represented all the shop keepers who are its members. Petitioner nos. 2 and 3 had also joined the petitioner no. 1 in

their individual capacity being the member of the said association and having shops allotted in Zila Parishad Dukandar Sangh in question.

2. The grievance of these petitioners in the writ application was in relation to the letter dated 31st May 2007 by which the rent of their shops was

enhanced allegedly against terms and conditions of the lease deed. In the said circumstances, respondents appeared and had taken a stand that the impugned letter dated 31st May 2007 was subsequently modified on 23rd August 2007, a copy of which has been annexed as Annexure-A to the counter affidavit wherein revised rent for specified size of shops ranging from Rs. 360, Rs. 325 and in some cases, Rs. 90 was fixed. Earlier, rent of these shops were in the range of Rs. 192, Rs. 320 and in some cases, Rs. 50 per month depending upon the size of the shops in question.

Respondents have also stated in their counter affidavit that the shop keepers started making payment of the modified rent of the shops and are entering into a fresh agreement. A xerox copy of the receipt of payments of rent of twenty such shopkeepers were annexed as Annexure-B series to the counter affidavit. These facts were not rebutted by the petitioners in their writ petition. In such circumstances, the writ petition was dismissed as infructuous by taking into account the statements made by the respondents. Relevant portion of the order dated 23rd November 2012 is quoted hereunder:

Respondents have appeared and filed their counter affidavit. They have categorically stated in para-6 to their counter affidavit that after issuance of the impugned letter dated 31.05.2007, the said order has already been modified on 13.08.2007 after acceptance of the rate of rent by the shopkeeper allottee's and the same has been acknowledged to them by serving letters, Xerox copy of the modified rate of rent is annexed as Annexure-A. It is further stated in para-6(ii) that according to the modified rate of rent, the allottee shop keepers started making payment and entering into the agreement, Xerox copy of receipt of payments of rent on modified is annexed as Annexure-B series.

In these circumstances, it is contended on behalf of the respondents that no cause of action now survives in the present writ petition. It appears from the submissions of the respondents that grievances of the petitioners appear to have been redressed and also no rejoinder to the said counter affidavit has been filed.

In the aforesaid background, this writ petition is rendered infructuous and is, accordingly, dismissed.

3. Review petitioners had earlier preferred a Letters Patent Appeal against the said judgment. However, by order dated 26th July 2013 passed in

LPA No. 224/2013, the letters patent appeal was dismissed as withdrawn with liberty to the petitioners to file a review petition before the learned

Single Judge. In such circumstances, the present review petition is being pressed on behalf of the petitioners.

4. Having heard learned counsel for the parties, it appears that the rents which were enhanced by the impugned letter, were in ranges of Rs. 900,

Rs. 1200, Rs. 700 and in some cases, Rs. 300 per month depending upon the size of the shops. These rates were however modified, by letter

dated 23rd August 2007 issued by the Deputy Development Commissioner-cum-Chief Executive Officer, Zila Parishad, Garhwa, as explained in

the earlier paragraph of this order whereby rents were substantially reduced in the range of Rs. 360, Rs. 600, Rs. 325, Rs. 140, Rs. 190, Rs. 140

and Rs. 90 per month respectively in respect of different sizes of shops. In such circumstances, number of shopkeepers accepted the modified rent

and paid the same also. These facts have been brought on record by the respondents which were never rejoined by the petitioner association or

the individual co-petitioners in the writ petition. The petitioners therefore cannot be allowed to take a stand that the order passed in the writ petition

suffers from any error apparent on the face of the record or because of any mistake committed by the Court. It may not be of much consequence

now that some of the members of the shopkeepers may not be inclined to accept the modified rents. Petitioners had approached this Court in the

form of an association who represent all the shopkeepers. In such circumstances, the review petitioners cannot be allowed to allege that the

modified rents are no longer acceptable to them, when however most of them have also made payments of the modified rents. Therefore, no

grounds for review are made out. The review petition is accordingly dismissed.