

(2014) 07 JH CK 0065

Jharkhand High Court

Case No: Writ Petition (Civil) No. 3322 of 2014

Tower Vision India Private
Limited

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision: July 10, 2014

Hon'ble Judges: Rakesh Ranjan Prasad, J

Bench: Single Bench

Advocate: Bharat Kumar, Advocate for the Appellant; Ratnakar Bhengra, Prashant Kumar Singh and Arvind Kumar Singh, Advocate for the Respondent

Judgement

Rakesh Ranjan Prasad, J.

Defect no. 1 has been removed.

2. Defects no. 2 and 3 are ignored.

3. So far defects no. 4 and 5 are concerned, the same are permitted to be removed in course of the day.

4. Heard learned counsel appearing for the petitioner and learned counsel appearing for the R.R.D.A.

5. When the authority of the R.R.D.A. did find that some Mobile Towers have been erected over a vacant piece of land and also over roof top of the building, a proceeding was initiated purported to be under Section 54 of the Ranchi Regional Development Authority Act, 1974 (in short "the Act"). Since the Mobile Towers had been erected without getting no objection from the authority of R.R.D.A. a proceeding was initiated vide U.C. Case No. 100 of 2012. Notices were issued to the owners of the land/buildings over which Mobile Towers had been erected.

6. Thereupon an order was passed on 21.8.2013 holding therein that those persons have got the Mobile Tower erected over the land/building without getting permission of the authority of the R.R.D.A. Accordingly, owners of the land/buildings

were directed to remove those Mobile Towers.

7. Being aggrieved with that order, an appeal in terms of the provision as contained in Section 54(2) of the Act was preferred before an appellate authority, R.R.D.A. which was numbered as Misc. Appeal No. 16 of 2013 but since the forum of the Tribunal is not functioning, the petitioner was unable to pursue the appeal.

8. According to learned counsel appearing for the petitioner, when the authority did find that Mobile Towers had been erected over a piece of land/building without having any permission of the authority, a proceeding was initiated but in the proceeding only the owners of the land/building had been noticed and not the persons at those instances Mobile Towers had been erected had been noticed and thereby the impugned order passed behind back of the petitioner is fit to be set aside.

9. Learned counsel by referring to Section 54 of the Act did submit that in terms of the provision as contained in Section 54 of the Act the authority before passing order needs to give notice not only to the owner but also to the person at those instance Mobile Tower had been erected.

10. Mobile Towers had been erected by the petitioner-Company, namely, M/s. Tower Vision India Private Limited and therefore, he was also to be noticed but admittedly, the Company had never been noticed in the matter and thereby the impugned order is fit to be set aside.

11. As against this, learned counsel appearing for the R.R.D.A. submits that admittedly Mobile Towers had been erected without having no objection from the authority but since it was erected over the land or building of the owner, notice was issued to the owner of the land/building as he would be considered to be the person at whose instance Mobile Towers were erected and therefore, since the owners of the land/building have already been noticed in the matter, nothing wrong was committed by the authority by passing order of removal of Mobile Towers.

12. In the context of the submission advanced on behalf of the parties, one needs to take notice of the provision as contained in Section 54 of the Act which reads as follows:

" 54. Order of demolition of building-(1) Where any development or erection of a building has been commenced or is being carried on or has been completed in contravention of the Regional Plan, Master Plan or Zonal Development Plan or without the permission, approval or sanction referred to in Sections 35, 36, 37 or in contravention of any conditions subject to which such permission, approval or sanction has been granted, any officer of the Authority empowered by it in this behalf may, in addition to prosecution that may be instituted under this Act, make an order briefly stating the reasons therefore directing that such erection or development work shall be removed by demolition, filing or otherwise by the owner

thereof or by the person at whose instance the erection or development work has been commenced or is being carried out or has been completed within a period of thirty days from the date on which a copy of the order of removal has been delivered to the owner or that person, as may be specified in the order, and on his failure to comply with the order, any officer of the Authority may remove or cause to be removed the erection or development work and the expenses of such removal shall be recovered from the owner or the person at whose instance the erection or development was commenced or was being carried out or was completed, as arrears of land revenue:

Provided that no such order shall be made unless the owner or the persons considered has been given a reasonable opportunity to show cause why the order should not be made. "

13. From perusal of the aforesaid provision, it does appear that whosoever be the owner or the person at whose instance there has been certain alteration/erection in the building in contravention of the provision of the Act and without having permission, approval or sanction in terms of the provision as contained in Sections 35, 36, 37 or in contravention of any condition, that erection/alteration/construction can be ordered to be demolished either by the owner or at whose instance such construction/erection has been made.

14. Further it does appear that before passing such order, the person, i.e. owner or the person at whose instance alteration/erection had been made in contravention of the provision of the Act, they need to be given reasonable opportunity to be heard in the matter but here in the instant case, though the owner of the land/building has been noticed but admittedly, the petitioner at whose instance erection of Mobile Tower was made has never been noticed and thereby the impugned order being violative of the principle of natural justice is fit to be set aside. Accordingly, it is set aside.

15. However, the matter is remanded back to the concerned authority of R.R.D.A. so that order be passed in accordance with law after hearing the petitioner who must put appearance there on 21.7.2014. At the same time, the authority may also decide the matter relating to grant of NOC which prayer as has been made in the application dated 21.6.2012/10.8.2013/9.10.2013 along with prescribed fees.

16. With this observation, this application stands disposed of. Meanwhile, if any consequential action has been taken such as taking of key of the generator set, that may be returned to the petitioner forthwith.