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HIGH COURT OF CHHATTISGARH AT BILASPUR

D.B. HON'BLE SHRI DHIRENDRA MISHRA, &  
HON'BLE SHRI R.N. CHANDRAKAR, J J

Writ Appeal No.318 of 2010

Appellant : President Jan Kalyan Samiti Institute of National and Foreign Language, Sector-8, 32 Bungalow Chowk Bhilai through its President Prabhunath Mishra S/o Chotkan Mishra, aged about 55 years, R/o Road No.8, Steel Nagar Camp-1, Bhilai, District Durg (CG)

**Versus**

Respondent : Steel Authority of India Limited, Bhilai Steel Plant, Bhilai, District Durg (CG)

Present :

Mr. Awadh Tripathi, counsel for the appellant.

Dr. N.K. Shukla, Sr. Advocate with Ms. A. Sengupta, counsel for the respondent.

ORAL JUDGMENT

(30<sup>th</sup> September, 2010)

Per Dhirendra Mishra, J

The appellant/Society was allotted primary school building at Sector-8, Bhilai Nagar for the purpose of running Pre-Primary School and Institute of National and Foreign Language on a nominal rent of Rs.1/- per month vide Annexure P/5 by the respondent. However, the above allotment was cancelled vide order dated 13<sup>th</sup> August, 2001 (Annexure P/6) on the grounds mentioned in the order and the Society was directed to hand over vacant possession of the building. On failure of the Society to hand over vacant possession of the public premises, proceedings were initiated against it before the Estate Officer under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (in short "the Act, 1971"). The Estate Officer issued notices to the Society under the provisions of the Act. The Society filed reply to the application for eviction. The Estate Officer afforded opportunity of hearing and adducing evidence to the parties, whereupon the respondent filed documents and examined its witnesses, whereas no witnesses were examined by the Society.

The Estate Officer, vide impugned order of Annexure P/2, passed the order of eviction under sub-section (1) of Section 5 of the Act, 1971 and directed the Society to vacate the suit premises within 15 days from the date of publication of the order and on its failure, it was held that the Society would be liable to be evicted from the said premises, if need be, by the use of such force as may be necessary. While passing the order, the Estate Officer also



allowed damages @ Rs.57,892/- per month from 1.1.2010 till vacation of the premises and damages of Rs.36,630/- for the claimed period i.e. 13<sup>th</sup> December, 2009 to 31<sup>st</sup> December, 2009.

The writ petition filed by the Society has been further dismissed by the impugned order.

Learned counsel for the appellant/Society submits that the learned Single Judge has erred in holding the Society as unauthorized occupant. The Society continued in possession of the premises for almost eight years after cancellation of allotment and the respondent accepted the rent for the said premises without any demure. Thus, by its implied conduct, the respondent has waived the effect of the notice dated 13.8.2001. The order of cancellation of allotment of the premises was passed without affording the Society an opportunity of hearing against the principles of natural justice. It is further argued that since vacant possession of the premises has already been obtained by the respondent, imposition of damages, as claimed by the respondent, for unauthorized use and occupancy of the suit premises w.e.f. 1.1.2010 till vacation of the premises, was wrongly awarded. However, this aspect has also not been considered in the impugned order.

Heard learned counsel for the appellant and perused the material available on record, including the impugned order.

Indisputably, the premises was allotted to the Society vide Annexure P/5 for a particular purpose with certain conditionalities. The allotment was cancelled way back in the year 2001 and the Society was directed to hand over vacant possession and on failure to do so, reminders were issued by the respondent (vide Annexures P/10, P/12, P/15, P/16, P/17 & P/19). From perusal of the notices, it is evident that it was specifically mentioned in the notice that on failure of the Society to comply with the notice, proceedings under the relevant provisions for eviction, for recovery of dues and damages would be initiated. However, on its failure to hand over vacant possession, an application was filed before the Estate Officer for eviction and recovery of damages and the Estate Officer, after affording sufficient opportunity of hearing to the parties and considering the evidence adduced by the respective parties, passed the order of eviction and also imposed damages from the date of filing of the application i.e. the year 2009 till vacation of the premises. The Society did not challenge the cancellation of allotment order passed in the year 2001 and thus, finding of the learned Single Judge that possession of the Society became unauthorized after its allotment was cancelled and as such, the Society became unauthorized occupant as defined under the Act, 1971, is strictly in accordance with law.

Since the Estate Officer has awarded damages on the basis of evidence adduced by the respective parties from the date of filing of the application and the same has been again confirmed by the learned District Judge in appeal preferred by the Society, we are of the opinion that the learned Single Judge has rightly not interfered in the order of the appellate authority. We find no substance in this appeal, the same deserves to be and is, accordingly, dismissed at the admission stage itself.

Sd/-  
**Dhirendra Mishar**  
Judge

Sd/-  
**R.N. Chandrakar**  
Judge