

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 372 of 2012**

- Jayant Bos S/o Nirmal Kumar Bos, Aged about 42 years, R/o MIG-2/35 Ravishankar Shukl Nagar, Korba, Distt. Korba C.G.

---- Petitioner**Versus**

1. Managing Director, SECL, Seepat Road, Bilaspur, District Bilaspur (C.G.)
2. General Manager Central Workshop, SECL Korba C.G.
3. Dy. General Manager (Utkhanan), Central Work Shop SECL Korba C.G.
4. Dy. General Manager (Karmik) Central Workshop, SECL, Korba C.G.

---- Respondents**WPC No. 974 of 2015**

- Jayant Bose S/o Nirmal Kumar Bose Aged About 45 Years R/o M.I.G.-2/35, Ravishankar Shukla Nagar, Korba, Civil And Revenue District Korba, Chhattisgarh

---- Petitioner**Versus**

1. Prabandh Nideshak, S.E.C.L. Seepat Road, Bilaspur, District Bilaspur, Chhattisgarh
2. General Manager, Central Work Shop, S.E.C.L. Korba, Chhattisgarh
3. Dy. General Manager Mining Central Work Shop, S.E.C.L. Korba, Chhattisgarh
4. Dy. General Manager Personnel Central Work Shop, S.E.C.L. Korba, Chhattisgarh
5. Estate Officer, Central Work Shop, S.E.C.L. Korba, District Korba, Chhattisgarh,

---- Respondents

For Petitioner : Shri Rajendra Patel, Advocate

For Respondents/SECL : Shri V.R. Tiwari and Ms. Astha Shukla, Advocates

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****12/04/2019**

1. Heard.
2. Both these petitions are being heard together as the cause of action and nucleus is one and the same.
3. Brief facts of this case are that the petitioner in both the petitions has challenged the letter dated 03.01.2012 (Annexure P-1) wherein it was informed that the amount payable to the petitioner has been set off against the dues of the rent to the extent of Rs.3,00,000/- whereas the dues of penal rent was Rs.5,28,049/-.
4. It is contended on behalf of the petitioner that the father of the petitioner namely N.K. Bose, who was working with the SECL, was an allottee of a house bearing quarter No.1C-8, at Russian Colony, Korba. He retired on 01.07.1990 and subsequently died in the year 2008. It is submitted by the petitioner that the petitioner was residing separately from his father since 1993 and he did not have any control over the quarter bearing No.1C-8, situated at Russian Colony, Korba. It is further submitted that the petitioner had carried out different work of contract with SECL, against which the dues were payable to the petitioner, however, the said dues were set off to the extent of Rs.3,00,000/- as a penal rent on the ground that the petitioner was continuing the occupation of the house bearing No.1C-8, Russian Colony, Korba. It is further stated that before the said set off being made, the petitioner was neither heard nor was given any opportunity of hearing, therefore, the letter dated 03.01.2012 is required to be quashed. Learned counsel for the petitioner further contended that the notice

issued by the Estate Officer dated 05.05.2015, wherein the amount owed to the petitioner of Rs.6,25,549 /- was directed to be recovered from the petitioner and without giving any opportunity of hearing the said order was passed since the petitioner was proceeded ex-parte.

5. In reply to the above, the SECL contended that the order dated 05.05.2015 was only in reference to the execution case No.13/832, which was out come of the final order dated 13.11.2013 passed by the Estate Officer, Korba. They would further submit that respondent No.5, the Estate Officer has passed the order in exercise of power under the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. They would further submit that the petitioner has not challenged the order dated 13.11.2013 and only the notice of execution has been challenged. Further learned counsel for the respondent contended that during the service period of the father of the petitioner he was allotted the house and the petitioner was also residing with him and was running his business from that house only and after the death of the father of the petitioner, he continued to occupy the said quarter/premise and instead of vacating the same, despite reminders, he continued and resided in the house till 31.10.2011. It is further stated that the house was finally vacated on 31.03.2015 and the intimation has been filed as Annexure R-1. Therefore, it is stated that in the circumstances penal rent of Rs.1200/- per month and service tax of Rs.500/- per month since 01.08.1998 was imposed, which is completely justified and legal.
6. Perused the documents filed along with the petition. In letter dated 03.01.2012 the penal rent has been imposed of Rs.5,28,049/- and the intimation has been sent that Rs.3Lakhs has been set off which was payable to

the petitioner. Another letter dated 05.05.2015 wherein the recovery intimation of Rs.6,25,549/- along with the interest @ 9% per annum has been levied and has been directed to be recovered from the petitioner. The petitioner though has said that he had vacated the house but nothing is on record to show/establish such fact. The SECL on the other hand has submitted that the house was occupied by the petitioner, therefore, two contradictory statements came to fore, wherein the petitioner has stated that he has vacated the premises whereas the SECL contended that he continued with the possession of the house. These are the disputed question of facts and cannot be adjudicated, as to who was actually in possession, which can only be established during the course of trial when the evidence are led before the competent Court. Apart from the fact that the SECL has filed a document Annexure R-1, which is not disputed to be issued by the petitioner, wherein the petitioner stated that he handed over the possession on 31.03.2015, therefore, according to the Annexure R-1, which is subject to just exception, this Court in exercise of power under Article 226/227 of the Constitution of India, cannot adjudicate as to who was in possession as disputed facts have surfaced. In the result, I am not inclined to exercise the extraordinary jurisdiction of this Court to evaluate the facts of evidence on the probabilities and accept the averments of either party. The petitions therefore fail and are hereby dismissed.

Sd/-

Goutam Bhaduri
Judge

Ashu