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**(1992) 01 GAU CK 0008**  
**In the Gauhati High Court**  
**Case No : Civil Revision No. 54 of 1985**

Binapani Roy and Others

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

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**Date of Decision :** 17-01-1992

**Acts Referred:**

Constitution of India, 1950 — Article 227

Evidence Act, 1872 — Section 116

Tripura Buildings (Lease and Rent Control) Act, 1975 — Section 12, 12(2), 13, 13(1), 13(3)

Tripura Land Revenue and Land Reforms Act, 1960 — Section 134, 135, 136

**Citation :** (1994) 1 GLR 98

**Hon'ble Judges :** S.K. Hom Choudhury, J; N.G. Das, J

**Bench :** Division Bench

**Advocate :** S. Deb and P.K. Dhar, for the Appellant; D.B. Sengupta, Government Advocate and S.N. Banerjee, for the Respondent

**Final Decision :** Dismissed

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## Judgement

S.K. Homchaudhuri, J.—This petition under Article 227 of the Constitution of India is directed against the order dated 28th November, 1983 passed by the then learned District Judge, West Tripura, Agartala, in Civil Misc. Case No. 20 (Revision) of 1983.

2. The Respondent filed a petition in December, 1982 before the learned Rent Control Court, Agartala, u/s 12(2) of the Tripura Buildings (Lease & Rent Control) Act, 1975 (hereinafter mentioned as "the Act") seeking khas possession of the suit premises after evicting the Petitioners of the instant petition contending that Petitioner No. 1 was in the suit premises on execution of a registered lease deed dated 9.4.75 on condition to pay rent of the suit premises Rs. 150/- per month. But the tenants (Petitioner No. 1 of the instant petition) stopped payment of monthly rent after Falgun 1384 B.S.

3. The Petitioners filed objection before the learned Rent Control Court denying

the contention made in the petition. They asserted that their predecessor-in-interest-husband of Petitioner No. 1 and father of Petitioner Nos. 2 and 3 had been possessing the suit land since 1949 and was carrying on the business by establishing Rice, Oil and Flour Mill in the name and style "Shiva Durga" Rice. Oil and Flour Mill on the suit premises. He had recorded all notices etc. from the income Tax Department upon his said mill since 1953 A.D.. Late Narahari Roy was continuously recorded as proprietor of the said mill and continuous record of Agartala Electric Supply, Tripura Administration that he paid the charge for electric connection for his said business established on the said suit premises, since 1957 A.D. After the death of Narahari Roy the Petitioner inherited the business and has been carrying on the said business on the suit premises. The Petitioners denied the existence of relationship of tenant and landlord in between them and the Respondent. They also denied the right, title and interest of the Respondents over the suit land. The Petitioners contended that after the Tripura Land Revenue & Land Reform Act, 1960 came into force, State became the owner of the suit land and the right, title and interest whatever, the Respondents might have had extinguished after coming into force of the said Act.

4. Learned Rent Control Court as preliminary issue, decided the question whether the denial of title of the landlord by the tenant was bonafide, in other words whether the relationship of the landlord and tenant existed between the Respondent and the Petitioners, the Petitioners in the written statement did not deny the execution of the registered lease deed on 9.4.75 purporting to take lease of the suit premises but asserted that taking advantage of the simplicity of Petitioner No. 1, the Respondent fraudulently influenced her and had the said lease deed executed without making to understand the contents of the document, In support of the case, the Respondent filed the registered lease Deed on 9.4.75. Besides that he filed puccarent receipts bearing signature of Petitioner No. 2, the Title deed, Khatian and municipal receipt in his name to show that the suit land and building belonged to him and the Petitioner No. 1 was inducted as tenant.

5. The Rent Control Court, after hearing the parties on the preliminary point, by order dated 13.7.83 passed in Case No. R.C.C. 20 of 1982 held that the Respondent was the owner of the suit premises and the Petitioners were inducted as tenant therein. Hence, there existed relationship of landlord and tenants between the Respondent and the Petitioners. By the said order dated 13.7.83 learned Rent Control Court ordered that for the purpose of contesting the main case by filing objection, the tenants (the Petitioners of the instant petition) was to deposit all arrear rent upto date by next date and also to deposit the monthly rent of each month in due time till disposal of the cases otherwise they would not be allowed to contest the case and necessary order for eviction would be passed according to the provision of Sub-section (3) of Section 13 of the Act.

6. The Petitioners preferred an appeal u/s 20 of the Act impugning the said order dated 13.7.83 passed by the learned Rent Control Court in the court of learned

Subordinate Judge, Agartala, which has registered as Misc. Appeal No. 5 of 1983. The Petitioners also filed an application praying for stay of further proceedings of R.C.C. Case No. 20 of 1982 pending in the Court of the learned Rent Control Court as well as the impugned order dated 13.7.83 till disposal of the appeal.

7. On the date of admission of the appeal, on behalf of the Respondent it was submitted that without payment or deposit the arrear rent, current rent as required u/s 13(1) of the Act, the appeal could not be admitted. However, by order dated 8.9.83 the learned Subordinate Judge admitted the appeal and called for the records and stayed further proceedings till 16.9.83. The Respondent impugned the said order dated 8.9.83 passed by the learned Subordinate Judge in a Revision petition u/s 22 of the Act in the court of learned District Judge, West Tripura, Agartala. The learned District Judge after hearing the parties and on consideration of the materials on record allowed the Revision petition holding that the tenants - the Petitioners of the instant petition could not proceed with the appeal preferred before the learned Subordinate Judge Court without first depositing the arrears of rent in full upto date and directed the learned Subordinate Judge to allow the Appellant before him in Case No. 5 Misc. Appeal of 1983 to deposit the rent within a reasonable lime, The Petitioners have impugned this order in this application under Article 227 of the Constitution.

8. We have heard Mr. S. Deb, learned Counsel for the Petitioners, Mr. D.B. Sengupta, learned Government Advocate and Mr. S.N. Banerjee, learned Counsel for Respondent No. 3.

9. Mr. S. Deb, learned Counsel for the Petitioners has submitted that the learned District Judge has committed an error of law apparent on the record in holding that unless the arrear rent was deposited the tenants, namely, the Petitioners could not proceed with the appeal inasmuch as Sub-section (1) of Section 13 of the Act contemplates deposit of all arrears of rent admitted by the tenants to be due in respect of the building upto the date of payment or deposit, not the rent as claimed by the Respondent and in the instant case the Petitioners never admitted that the Respondent was the landlord far less any rent due to Respondent in respect of the suit premises. Before the appellate court, the finding of the learned Rent Control Court on the question as to whether ".here existed relationship of tenant and landlord between the Respondent and the Petitioners was impugned. When the Petitioner denied to be tenant under the Respondent, the question of admitting any arrear on account of monthly rent due to the Respondent, could not or did not arise. Earned Counsel for the Petitioners has submitted that it is clear from the provision of Sections 134, 135 and 136 of the Tripura Land Revenue & Land Reforms Act 1960 that whether right, title and interest over the suit land, the Respondent extinguished by operation of law after coming into force the said Act of 1960.

10. Mr. S. Deb, learned Counsel for the Petitioners has further submitted that the learned District Judge has acted illegally and without jurisdiction in entertaining a revision petition against the order dated 8.9.83 passed by the learned

Subordinate Judge in as much as by the said order the appellate court simply admitted the appeal and fixed 16.9.83 for consideration of the prayer for stay and revisional jurisdiction against that could not be invoked. Another lack of Mr. Deb is that when the question as to whether the Respondent has right, title and interest in the suit premises is involved, this question can only be resolved in a civil suit not before the learned Rent Control Court.

11. Mr. S.N. Banerjee, learned Counsel for Respondent No. 3 on the other hand, has submitted that the appeal was filed without payment and/or deposit all arrear rent by the Petitioners. As such, the learned Appellate court acted illegally and without jurisdiction in admitting the appeal by order dated 8.9.83 inasmuch as condition precedent for filing the appeal is to deposit the rent as provided under Sub-section (1) of Section 13 of the Act and the learned District Judge has rightly allowed the Revision petition against the said order holding that unless the arrear rent was deposited by the tenants (the Petitioners) their appeal could not be entertained. Learned Counsel for the Respondent has further submitted that the registered lease deed dated 9.4.75, execution of which has been admitted by the Petitioners, clearly established that the Petitioners were inducted as tenants in the suit premises, Whether the right of the Respondent over the suit premises was extinguished by operation of law under the provision of Tripura Land Revenue & Land Reforms Act, 1960 or not as per provision of Section 116 of the Evidence Act, the Petitioners who have been inducted as tenants in the suit premises by the registered deed of lease dated 9.4.75, all estopped from questioning the title of the Respondent, the landlord. As such, there is no infirmity in the impugned order which merits interference in the exercise of jurisdiction under Article 227 of the Constitution.

12. We have considered the submission made on behalf of the Petitioners as well as on behalf of the Respondents and we have perused the materials on record. To appreciate the rival contentions, it is appropriate to have a look into the following provisions of the Act.

Section 13(1)- No tenant against, whom an application for eviction has been made by a landlord u/s 12 shall be entitled to contest the application before the Rent Control Court under that section, or to prefer an appeal u/s 20 against any order made by the Rent Control Court on the application, unless he has paid or pays to the landlord, or deposit with the Rent Control Court or the appellate authority, at the case may be, all arrears of rent admitted by the tenant to be due in respect of the building upto the date of payment or deposit, and continues to pay or to deposit any rent which may subsequently become due in respect of the building, until the termination of the proceedings before the Rent Control Court or the appellate authority as the case may be.

(2) The deposit under Sub-section (1) shall be made within such time as the Rent Control Court may fix and in such manner as may be prescribed and shall be accompanied by the fee prescribed for the service of notice referred to in Sub-section (4):

Provided that the time fixed by the Rent Control Court for the deposit of the arrears of rent shall not be less than fortyfive days from the date of the order and the time fixed for the deposit of rent which subsequently accrues due shall not be less than two weeks from the date on which the rent become due.

(3) If any tenant fails to pay or to deposit the rent as aforesaid, the Rent Control Court or the appellate authority, as the case may be, shall, unless the tenant shows sufficient cause to the contrary, stop all further proceedings and make an order directing the tenant to put the landlord in possession of the building.

(4)...

Section 22(1) In cases where the appellate authority empowered u/s 20 is a Subordinate Judge, the District Judge and in other cases the High Court, may, at any time, on the application of any aggrieved party, call for and examine the records relating to any order passed or proceedings taken under this Act by such authority for the purpose of satisfying itself as to the legality, regularity or propriety of such order or proceedings, and may pass such order in reference thereto as it thinks fit.

(2) The costs of, and incident to, all proceedings before the High Court Or District Judge under Sub-section (1) shall in its or his discretion.

From the provisions of Section 22 it is clear that the District Judge is empowered to call for the records relating to any order passed or proceedings taken under the provision of the Act by the appellate authority for the purpose of satisfying itself as to the legality, regularity or propriety of such order or proceedings. Therefore, it cannot be said that the learned District Judge has acted illegally and without jurisdiction in entertaining the revision petition against the order passed by the appellate court by which the appellate court had admitted the appeal filed without complying the provisions of Section 13 of the Act. As such, we hold that the revision petition u/s 22 of the Act against the order passed by the appellate Court in the instant case is, competent.

13. No doubt, the Petitioners have denied the title of the Respondent-landlords and the learned Rent Control Court on perusal of the materials on record has found that the Respondent is the landlord and the Petitioners were the tenants in respect of the suit premises. In other words, the denial of tide of the landlord has not been found bonafide. Section 12 of the Act provides that where the tenant denies the title " of the landlord, the Rent Central Court shall decide whether the denial is bonafide and if it records a finding to that effect, the landlords shall be entitled to sue for eviction of the tenant in a Civil Court and that Court may pass a decree for eviction. In the instant case, apparently the Rent Control Court on consideration of the materials on records found that the denial of title of the landlords was not bonafide. As such, no question arises for referring the dispute to Civil Court.

14. The submission of Mr. Deb, that unless the tenant admits that arrear of rent

is due in respect of the building, no order u/s 13 of the Act could be passed asking the tenant to pay or deposit the arrear rents as well as to continue to pay or deposit the monthly rent due in respect of the tenanted premises during the pendency of the litigation, deserves due consideration. The Petitioners have not admitted that the Respondent is the landlords of the suit premises and/or they have been inducted as tenants therein. They have also not admitted that the rent and/or arrear rents is due in respect of the suit premises. This requires interpretation of the words "all arrear of rent admitted by the tenant to be due in respect of the building" appearing in Sub-section (1) of Section 13 of the Act. If a literal meaning is given to these words, unless the tenant specifically admits any arrear rent due to landlord in respect of the tenanted premises the condition to make payment of the arrear rent as well as the current rent to contest the proceeding and/or to prefer an appeal as provided u/s 13 of the Act will not arise. In our opinion, giving literal meaning of the words "admitted by the tenant to be due" would frustrate the provision of Section 13 of the Act and make the provision nugatory and/or sties. But this could not be the intendment of the legislature. Section 13 of the Act has been inserted with the intendment to avoid litigations for realisation of arrear rents which is likely to accumulate during the long period of litigation and also to deter the tenant from resorting to unfair practice to use and occupy the tenanted premises without payment of rent during the long period of protracted litigation. If a literal meaning is given to the words "admitted by the tenant to be due" almost in all cases for eviction of a tenant for non-payment of rent, tenants by raising the unfounded plea of non-existence of relationship of landlord and tenant and/or by not admitting any rent payable by the tenant to the landlord, Can easily frustrates the mandates of the provisions of Section 13 of the Act. We are of the view that the rational and reasonable meaning of the words "admitted by the tenant to be due" is the inference of admission from materials on records. If the materials on records prima facie discloses the admission of relationship of landlord and tenant and the rate of monthly rent payable, admission on the part of the tenant to be inferred and the tenant would be required to pay or deposit arrear rent and continue payment of the current rent during the pendency of the litigation as enjoined u/s 13 of the Act, failing which the tenant shall not be entitled to contest the application for eviction and/or for preferring appeal against an order passed by the Rent Control Court, In the instant case, the execution of the registered lease deed dated 9.4.75 between the Respondent and Petitioner No. 1 has been admitted and from the said deed it is clear that Petitioner No. 1 was inducted as a tenant in the suit premises by the Respondent as owner thereof on condition of payment of rent @Rs. 150/- per month. The Petitioners cannot resile from the terms of the registered lease deed dated 9.4.75 by taking the plea dial the lease deed was executed by fraudulently influencing Petitioner No. 1. Mr. Banerjee is correct in submitting that u/s 116 of the Evidence Act a tenant is estopped from challenging the title of the landlord and. as such it being apparent from the registered lease deed dated 9.4.75 that Petitioner No. -1 was inducted as a tenant under the Respondent into the suit premises and the tenants namely, the

Petitioners of the instant petition are estopped from challenging the title of Respondent over the suit premises, whether by operation of law the State became the owner of the suit land or not. It having been clear from the registered louse deed dated 9.4.75 that Petitioner No. I was inducted as tenant in the suit premises on the condition of payment of rent @ Rs. 150/- per month, it has to be inferred that arrear rents due to be paid in respect of the suit building as well as the monthly rent @ Rs. 150/- is an admitted fact.

15. For the reasons stated above, we do not find any infirmity in the impugned order passed by the learned District Judge which merits interference by this Court in the exercise of power under Article 227 of the Constitution. The petition is, therefore, without merit and is dismissed, We make no order to costs. The ad interim order passed by this Court directing that the Petitioners should not be evicted from the suit premises in the meantime, stands vacated.