

(1988) 05 GAU CK 0002
In the Gauhati High Court
Case No : Civil Rule No. 32 of 1987

Dinesh Chandra Majumdar & Another	APPELLANT
Vs	
State of Tripura And 3 Others	RESPONDENT

Date of Decision : 31-05-1988

Acts Referred:

Tripura Buildings (Lease and Rent Control) Act, 1975 — Section 3, 3

Citation : (1988) 2 GLR 95

Hon'ble Judges : J.M.Srivastava, J and S.N.Phukan, J

Bench : Division Bench

Advocate : P.K.Dhar, M.Mazumdar, K.N.Bhattacharjee, Advocates appearing for Parties

Judgement

Phukan, J.—The petitioners herein were tenants under respondent No. 3 of the present petition. The respondent No. 3 as landlord filed a petition under section 12 of the Tripura Buildings (Lease and Rent Control) Act, 1975, hereinafter referred to as the Act for eviction of the present petitioners from the suit premises. The suit was filed in the year 1983, but due to preliminary objections raised by the Present petitioner tie parties have ret gone into trial as yet.

2. Before the learned Presiding Officer of the Rent Control Court the present petitioners filed a petition challenging the authority of the learned Presiding Officer on the ground that appointment as Presiding officer was not according to law. The learned trial court by an order dated 16.6.1984 decided that the question would be taken up at the time of final hearing and being aggrieved an abortive appeal was filed before the learned Subordinate Judge. Thereafter, a revision petition was filed before the learned District Judge which was allowed directing the learned trial court to decide the question of jurisdiction. However, the learned District Judge in the operative portion of the order directed that the records be sent to the learned Munsiff. Thereafter the learned trial court took up the matter and decided that the appointment of the Presiding officer was according to law. The present petitioner filed an appeal which was allowed by the

learned Subordinate Judge on the technical ground that after disposal of the revision petition the learned District Judge remanded the case to learned Munsiff and not to the learned Presiding officer of the Rent Control Court. The respondent No. 3 herein approached the learned District Judge for exercising his revisional jurisdiction under the Act. The learned District Judge by the judgment and order dated 28th November, 1986 passed in Case No. 8 Civil Revision (RCC) of 1986 allowed the petition holding that the appointment of the Presiding officer was legal and valid. Hence the present petition.

3. The first question which needs our consideration is whether the appointment of the Presiding officer of the learned Rent Control Court was legally and validly made. Subsection (1) of section 3 of the Act runs as follows :

"(1) The State Government may, by notification in the Official Gazette, appoint a person who is or is qualified to be appointed, a Munsiff to be the Rent Control Court for such local areas as may be specified therein."

4, The notification appointing learned Sadar Munsiff, Agartala as the learned Rent Control Court is at annexure 7 to the petition which is reproduced below:

"GOVERNMENT OF TRIPURA

LOCAL SELF GOVERNMENT DEPARTMENT.

No. F.14 (3)LSG/76 Dated Agartala, the 5th

April, 1977.

NOTIFICATION

In exercise of the powers conferred by Subsection (I) of the section 3 of the Tripura Buildings (Lease and Rent Control) Act, 1975 (Tripura Act No. 5 of 1975) the Governor is pleased to appoint the Sadar Munsiff, to be the Rent Control Court of the Municipal limit of Agartala Town.

By order of the Governor.

Sd/ K. Bhattacharjee.

Under Secretary to the Government

of Tripura."

5. From reading subsection (1) of section 3 of the Act, we find that the intention of the legislature was clear and the legislature delegated the power to the State Government to appoint a Munsiff or a person qualified to be a Munsiff to be Rent Control Court. In other words, the legislature wanted that an application filed under the Act should be tried by a person trained and experienced in law.

6. Now the question is whether the power to appoint a person will also include the power to appoint ex officio. Section 15 of the General Clauses Act, 1897 inter alia provides that where, by any Central Act or Regulation, a power to appoint

any person to fill any office or execute any function is conferred, then, unless it is otherwise expressly provided, any such appointment, may be made either by name or by virtue of Office. From Tripura Code, Part I, we find that the aforesaid Ganeral Clauses Act was extended to the Union Territory of Tripura under Section 3 of the Union Territories (Laws) Act; 1950. From the Tripura General Clauses Act, 1966 (Act No. 5 of 1966) we also find that the said General Clauses Act was extended in respect of Acts of the legislature of the Union Territory of Tripura. The Act namely, the Tripura Buildings (Lease and Rent Control) Act, 1975 was enacted after the Union Territory of Tripura attained statehood. Nothing has been placed before us to show that after Union Territory of Tripura became a State any separate General Clauses Act was enacted by the legislature of Tripura. In absence of such an Act, we are of the opinion that the principles contained in Section 15 of the General Clauses Act, 1897, which is a judicially accepted principle, shall apply regarding State Laws. As under Subsection (1) of Section 3 of the Act, the State Government can appoint a Munsiff as Presiding Officer of the Rent Control Court, the Government can make the appointment by virtue of the office of the Munsiff and, as such, we do not find any illegality in the notification at Annexure7 by which the learned Sadar Munsiff was appointed to exercise power of Presiding Officer of the Rent Control Court within the municipal limit of Agartala town.

7. The learned counsel for the petitioners has drawn our attention to Tripura Judicial Service Rules, 1974 and Tripura (Courts) Order 1950, in support of his contention that there cannot be any post of Sadar Munsiff, as such a post is not included either in the said rules or in the Order. In the said Rules and the Order, classes of courts/posts have been mentioned and Munsiff is one such class of post/court. While posting a Munsiff in the District Head quarter, it is wellknown that the senior most Munsiff is designated as Sadar Munsiff and other Munsiffs are designated as Munsiff No. 1, No. 2 etc. We are, therefore, unable to accept the contention that no post can be designated as Sadar Munsiff. In fact, such a post exists at Agartala town. Hence the contention of the learned counsel for the petitioners has no force.

8. The learned counsel for the petitioners has urged that the earlier order of the learned District Judge remanding the case to the learned Sadar Munsiff was bad as the matter came up before him from the court of learned Rent Control Court and, as such, the learned Subordinate Judge rightly allowed the appeal and remanded the case for retrial. We are unable to accept this technical ground as in our opinion even if such an order, which is a ministerial one, would not have been passed the office of the District Judge would have sent the records to the learned lower court on this technical ground the remand of the learned Subordinate Judge was illegal and it was rightly set aside by the learned District Judge exercising the revisional jurisdiction.

9. It has also been contended before us on behalf of the petitioners that the learned District Judge was not empowered to correct his earlier order of remand

of the case to the learned Munsiff. For the reasons stated above, we also reject this contention.

10. Annexure "3" to the present petition is the petition which was filed before the learned Rent Control Court challenging the jurisdiction of the Court and in para 4 of the petition it was urged that the notice dated 11.3.1983 issued to the present petitioners by the learned Rent Control Court under the signature of the Sheristadat was bad as no such post of sheristadar exists under the Rent Control Court. This is purely a technical point and has no merit, as such notices are issued under orders of the court and as such, it can be signed by any ministerial staff of the court. As the learned Sadar Munsiff was also empowered as Presiding officer of the Rent Control Court we are of the opinion that the Sheristader of the learned Sadar Munsiff could issue such notice under his signature. Hence this contention is also rejected.

11. From the records it appears that a point was taken that the order of the learned Rent Control Court was not validly and legally made as no issue was framed on this point. We see no substance in it. As the point raised regarding appointment of the learned Presiding Officer could be decided on the basis of notification and relevant laws, for that purpose no issue need be framed in such cases.

12. Though the petition under Section 12 of the Act was filed in the year 1983, the trial has not yet started because of the technical grounds raised by the petitionerstenants. We, therefore, direct that the learned Presiding Officer, Rent Control Court shall try to expedite bearing of this proceeding and shall complete it as early as possible preferably within a period of six months from the date of receipt of this order. Let a copy of this order be sent to the learned court.

13. For the reasons stated above, we are of the opinion that this is not a fit case to exercise our writ jurisdiction and accordingly the petition is dismissed. Parties to bear their own costs.