

(1986) 07 GAU CK 0010
In the Gauhati High Court
Case No : Civil Revision No. 208/85

Pawan Kumar Keyal & Ors.

APPELLANT

Vs

Santosh Chandra Das & Sons

RESPONDENT

Date of Decision : 02-07-1986

Acts Referred:

Assam Urban Areas Rent Control Act, 1972 — Section 4, 4, 6, 6, 7, 7

Citation : (1987) 1 GLR 221

Hon'ble Judges : Manisana, J

Bench : Single Bench

Advocate : S.Ali, D.K.Bhattacharyya, B.Sarma, B.N.Sarma, A.C.Sarma,
Advocates appearing for Parties

Judgement

1. This revision petition arises from the order dated 26.6.1985 passed by the learned Assistant District Judge (I), Gauhati, in Misc. Appeal No. 7 of 1985, reversing the order dated 11.2.1985 passed by the learned Munsiff (II), Gauhati, in Misc. case No.57 of 1984 (118 of 1984).

2. The plaintiffs/petitioners brought T.S. No. 35 of 1984 in the Court of the learned Assistant District Judge (I), Gauhati against the defendant/opposite party for possession of the suit premises and recovery of arrears of rent on the ground that the defendant/opposite party has defaulted to pay rent and the house is required bonafide for the plaintiffs/petitioners and the defendant/opposite party has materially changed the house by improper use of the same.

3. During the pendency of the suit, the opposite party filed Misc. (J) Case No. 57 of 1984 (118 of 1984) against the petitioners under section 4 of the Assam Urban Areas Rent Control Act, for short the "Act", in the Court of the learned Munsiff (II), Gauhati, for repairing the suit premises. The petitioners filed objection stating that the opposite party being a defaulter is not entitled to any relief under sections 6 and 7 of the Act and that damage of room was caused by the petitioner himself by improperly the same. The learned Munsiff, after recording the evidence and hearing the parties, ordered that the opposite party

can make "minor repairs of the said house for his safety whenever necessary during the pendency of T. S. No. 35/84 and the petitioner will keep a clear book of accounts showing the cost of repairs. In the appeal, the learned Assistant District Judge (I), Gauhati set aside the order of the learned Munsiff and substantially allowed the prayer of the opposite party; hence this revision petition.

4. Mr. B. Sarma, the learned counsel for the petitioners, has submitted that the moment a tenant has done anything contrary to the provisions of clause (m) of section 108 of the T. P. Act, the tenancy is automatically determined and the landlord has no duty to perform on his part under sections 6 and 7 of the Act.

5. The question then is : Whether the tenancy is determined the moment it has done anything contrary to the provisions of any of the clauses (in), (o) or (p) of the T. P. Act.

6. In *V. Dhanyapal Chhittiar vs. Yesodai*, AIR 1979 SC 1745, the Supreme Court has held that the tenancy actually terminates on the passing of the order or decree for eviction and the building falls vacant by his actual eviction. The giving of notice, therefore, is a mere surplus. Even if the lease is determined by a forfeiture under the T.P. Act, the tenant continues to be a tenant, that is to say, there is no forfeiture in the eyes of the law. The tenant becomes liable to be evicted and the forfeiture comes into play only if he has incurred the liability to be evicted under the State Rent Control Act, not otherwise.

7. In *Ramesh Chandra vs. Deo Narayan Prasad*, LPA 11 of 1976 of this Court, the Hon^{ble} Lahiri J. has held :

"On a careful reading of section 6 of the Act and the definitions of the term "tenant" and "landlord" it appears clear that the journal relationship of landlord and tenant comes to an end only upon passing of an order or decree for ejectment by a competent court in conformity with the provisions of section 6 of "the Act." Till such a date a tenant continues to be a tenant notwithstanding hundreds of notices issued by the landlord expressing his intention to determine the tenancy. The Act is clear that a tenant remains as a tenant, continues to enjoy all the rights of a lessee and is liable to the statutory constrictions created by "the Act" and other liabilities or conditions of the tenancy."

8. In view of the above decisions, if a tenant has done anything contrary to the provisions of any of the clauses (m), (o) or (p) of the T.P. Act, the tenant only becomes liable to be evicted. The tenancy is actually determined on the passing of the decree or order for eviction and the building falls vacant by his actual eviction. Till such a date the tenant continues to be a tenant and enjoys all the rights of the tenant and is liable to the statutory constrictions created under the relevant laws. The respective rights and liabilities of the landlord and the tenant will continue. Therefore, duty of a landlord under sections 6 and 7, is one thing and the right or the liability of the landlord and tenant under the clauses (m),(o) or (p) is another thing.

9. The next question which arises for consideration is in the circumstances of the case whether the tenant has a right to get the house repaired. As already held, the tenancy continues and the respective rights and liabilities of the landlord and tenant will also continue. In the petition, in Misc. (J) Case No. 57 of 1984 (118 of 1984) out of which the present revision arises, it is stated by the opposite party that the C.I. sheet roof of the godown has become extensively damaged and perforated due to rusting and nonrepair for a petty long time and that rain water falls into the godown causing damage to the goods stored therein, and winds come through the roof. The main wooden door of the godown has become damaged as the timber used is very old. The electric connection has also been disconnected from the said godown. In the written objection of the petitioner it is stated that the alleged rusting of C.I. sheets and the alleged damage caused to the doors and windows were due to wear and tear of time. Considering the overall circumstances of the case including the pendency of T.S. No. 35/84, I am of the view to affirm the order of the learned Assistant District Judge (I), Gauhati, passed in Misc. Appeal No. 7 of 1985 with some modification will meet the ends of justice.

10. For the foregoing reasons, the order of the learned Assistant District Judge (I), Gauhati, passed in Misc. Appeal No. 7 of 1985 is hereby affirmed with the modification that the electric connection will be subject to the relevant provision under the Electricity Act and Rules framed there under, and the expression "within a fortnight from the date of this order" appearing in the order of the learned Assistant District Judge shall be read as "within a fortnight from the date of the order of this Court." It is clear that this judgment shall not influence the learned Assistant District Judge or any learned Judge while disposing of T.S. No. 35/84. With the above observations and direction, the petition is dismissed. No costs.