

(1986) 08 GAU CK 0021

In the Gauhati High Court

Case No : Civil Revision No. 60 of 1986 (Renumbered as 24 of 1986)

Shri Ramesh Chandra Sharma

APPELLANT

Vs

Shri Jitendra Kishore Hom Roy and Others

RESPONDENT

Date of Decision : 25-08-1986

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 113, 115, 151

Constitution of India, 1950 — Article 227

Tripura Buildings (Lease and Rent Control) Act, 1975 — Section 12, 12(3), 12(4), 20, 22

Citation : (1986) 2 GLR 306

Hon'ble Judges : S.N. Phukan, J

Bench : Single Bench

Advocate : A.K. Bhattacharjee, K. Agarwal and P.C. Misra, for the Appellant; S.K. Hom Choudhary, M.C. Deb Roy, P.M. Palle, P.K. Majumdar, B. Das, P. Deb Roy and K. Bhattacharjee, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Phukan, J.—This is an application u/s 115 and/or 151 of the Code of civil Procedure, for short the "Code" read with Article 227 of the Constitution. The application is directed against the judgment and order dated 12.2.86 passed by the learned District Judge, West Tripura at Agartala in Civil Revision No. 1 of 1986.

2. Briefly stated, the present Petitioner was a tenant under opposite party No. 1 aspect of a premise's situated at Agartala. The opposite party No. 1 filed an application for eviction before the learned Presiding Officer, Rent Control Court, u/s 12 of the Tripura Buildings (Lease and Rent Control) Act, 1975. for short the "Act". The ground for eviction was that the premises was required by the landlord-opposite party for his bonafide need of the premises for his own occupation after reconstruction. The Petitioner-tenant denied the allegation and alleged that the present application was filed in order to have rent at an abnormal increased rate" and as such decided to evict the tenant Petitioner.

3. The learned trial Court after considering the evidence on record came to the finding that the premises was required bonafide for the personal use and occupation of the landlord-opposite party and accordingly ordered eviction. The learned trial Court also observed that the Petitioner-tenant, who is a Government servant was allotted a Government quarter but he did not avail of the opportunity and as such no hardship would be caused to him if an eviction order was passed. the learned trial Court accordingly by its judgment and order dated 9.8.85 passed in Case No. 4 R.C.C/84 allowed the petition for eviction of the Petitioner-tenant. By judgment and order dated 16.12.35 passed in Case No. 25 Misc. (R.C.C.) appeal/1985 the learned Subordinate Judge, Agartala, who was the appellate authority under the Act, dismissed the appeal and upheld the judgment and order of the trial Court. The learned lower appellate Court also held that the premises in question was bonafide required by the landlord-opposite party for his own occupation and for the occupation of the members of his family dependent on him. Against the said order, the Petitioner-tenant preferred a revision petition u/s 22 of the Act before the revisional authority, i.e. the learned District Judge. West Tripura at Agartala which was also dismissed. Hence the present petition.

4. Mr Misra, learned Counsel for the Petitioner attacked the judgments and orders of three learned lower Courts on various grounds and in support he relied on numerous decisions of different High Courts. Mr B. Das, learned Counsel for the opposite party contended that in view of the provisions of the Act the present petition is not maintainable and is liable to be dismissed.

5. The Tripura Building (Lease and Rent Control) Act, 1975, is a piece of special legislation to regulate the leasing of buildings and to control rent of such buildings in the State of Tripura. I have examined the provisions of the Act and I am satisfied that this piece of legislation is a self-contained one. Section 12 of the Act. inter alia, provides for procedure for eviction of a tenant by obtaining an order from the Rent Control Court. Section 20 provides for appeal against an order passed by the Rent Control (Court and Section 22 provides for revision against an order passed by the appellate authority. As the fate of the present petition will depend on the interpretation of Section 22 of the Act, I quote below the said 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 of 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 be in its or his discretion.

The language of the said Section 22 is plain and admits of but one meaning and as such there is no difficulty of interpretation of the said Section. The intention of the legislature is clear that only one revision petition under the statute against the order of the appellate authority would lie and in case a Subordinate Judge is the appellate authority such application for revision would lie before the District Judge and in other cases to the High Court. There is no dispute at the bar that learned Munsiff was the Rent Control Court u/s 12 of the Act and learned Subordinate Judge was the appellate authority u/s 20 of the Act. So, a revision against the order of the appellate authority, in the instant case, would lie before the learned District Judge and accordingly the said petition was filed, which was rejected. Thus from the facts of this case, it is clear that the Petitioner-tenant exhausted all the remedies provided under the Act and hence a second revision petition either under the Act u/s 113 of the Code would not lie before this Court. On that ground alone the present petition is liable to be thrown out. Incidentally if we compare Section 22 of the Act with Section 115 of the Code, we find that Section 22 of the Act gives wider power to the revisional authority as the said authority has to satisfy itself as to the legality, regularity or propriety of the order or proceedings before the appellate authority. In the light of the above provision of law, the learned District Judge, the revisional authority, has examined the evidence on record and the law to ascertain whether the judgment and order of the appellate authority was legal, regular and proper.

6. For the reasons stated above, I am of the opinion that in view of the clear provisions of Section 22 of the Act in which the legislature expressly provided only for one revision under the Act against the order of the appellate authority, the present petition is not maintainable and is liable to be dismissed.

7. The second contention on behalf of the Petitioner-tenant was that this is a fit case where this Court may exercise the power of superintendence under Article 227 of the Constitution. Mr. Misra, learned Counsel took the trouble of drawing my attention to the judgments and orders of the lower Courts in order to satisfy this Court that the order for eviction was passed by misreading the evidence on record and also by not applying the proper provisions of law. According to Mr. Misra, this petition for eviction comes under Clause (iv) of Sub-section (4) of Section 12 of the Act and not under Sub-section (3) of the said Section 12 of the Act. I have carefully examined the said provisions in the Act and I am of the opinion that Clause (iv) of Sub-section (4) of Section 12 of the Act will be attracted when the landlord requires the house bonafide for reconstruction but in the instant case, the case of the landlord is that he bonafide needs the premises for his own occupation and for the occupation of the members of his family and he shall use the building after it is reconstructed. His case is not only for reconstruction. I, therefore, hold that Sub-section (3) of Section 12 of the Act is attracted in the instant case and not Clause (iv) of Sub-section (4) of the said section.

8. The power of superintendence of this Court under Article 227 of the

Constitution is well-settled. This power is exercised most sparingly and only in appropriate cases to keep the Subordinate Courts and Tribunals within the bounds of their authority, and not for correcting mere errors. (See Waryam Singh v. Amarnath AIR 1954 SC 2151 . This principle was also reite rated in AIR 1975 1297 (SC) , where in Hon"ble Mr. Justice Bhagwati, as he then was, held that this power cannot be invoked to correct and error of fact which only a superior Court can do in exercise of its statutory power as a Court of appeal and the High Court cannot in guise of exercising its jurisdiction under Article 227 convert itself into a Court of appeal when the legislature has not conferred a right of appeal. It was further held that the High Court cannot while exercising jurisdiction under Article 227, interfere with findings of fact recorded by the subordinate Court or tribunal and its function is limited to seeing that the subordinate Court or tribunal functions within the limits of its authority and it cannot correct mere errors of fact by examining the evidence and reappreciating it.

9. In the case in hand, the learned lower Courts after appreciating the evidence on record came to a definite finding that the premises in question is required bonafide for the use and occupation of the landlord opposite party and the members of his family. In view of the law laid down above, this Court cannot by exercising powers under Article 227 of the Constitution reappreciate the evidence on record. That apart, the learned lower Courts were exercising powers conferred on them by the Act, which is a special statute and I am satisfied that the learned lower Courts while giving their findings were functioning within the limits of their jurisdiction. I am, therefore, of the opinion that this is not a fit case for exercising the extraordinary power of superintendence under Article 227 of the Constitution.

10. The last point which needs consideration it whether it is a case where this Court should exercise its inherent power u/s 151 of the Code. Such power can be exercised for the ends of justice of to prevent the abuse of process of the Court. As stated earlier, all the three learned lower Courts have given opportunities to both the parties to place their respective case, have examined the evidence on record and also the relevant law. Learned Courts have come to a clear and definite finding that this is a fit case for evicting the Petitioner-tenant from the premises in question. I do not find any miscarriage of justice or abuse of process of the Court and as such I do not deem it fit and proper to exercise the inherent power of this Court.

11. In the result, the present petition is dismissed. No costs.