
(2014) 04 GAU CK 0034
In the Gauhati High Court
Case No : CRP No. 363/2010

Smti. Shamdasi Pal and Others

APPELLANT

Vs

Mohidanessa and Others

RESPONDENT

Date of Decision : 30-04-2014

Acts Referred:

Citation : (2014) 04 GAU CK 0034

Hon'ble Judges : Nishitendu Chaudhury, J

Bench : Single Bench

Advocate : B.C. Das and Mr. U. Dutta, Advocate for the Appellant; A. Ganguly, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Nishitendu Chaudhury, J.—Heard Mr. U Dutta, learned counsel for the petitioners and Mr. A Ganguly, learned counsel for the opposite parties. By this revision petition the petitioners who were defendants in Title Suit No. 33/2006 have concurrent findings of the learned court below in regard to decree passed u/s 5 of the Assam Urban Areas Rent Control Act, 1972 on the ground of bona-fide requirement of the plaintiffs for demolishing of the existing house and construction thereafter.

2. Plaintiffs Mohidanessa and others instituted a title suit bearing No. 33/2006 in the court of learned Munsiff No. 1 at Tezpur stating that the predecessor of the defendants, namely, Haripada Pal became tenant in respect of the suit room at monthly rental of Rs. 550/- (Rupees five hundred fifty) only payable within 7th day of every succeeding month as per Bengali calendar. It is further stated that subsequently the mode of payment was changed following English calendar instead of Bengali calendar. The successors of Haripada Pal attorned the successors of the original landlord and the tenancy has been continuing for over half a century while the economy of the country has undergone a sea change. With the advancement of the science and technology, the trade in commerce of the area also changed, in the mean time, paving for more scope and

potentialities in commerce but the practice of paying a meagre sum of Rs. 550/- (Rupees five hundred fifty) only per month in the commercial hub in Dhekiajuli has been continuing merely as matter of tradition. It is the case of the plaintiffs that there is a vacant space at the back side of the suit premises over which a market complex can be erected for the benefit of the plaintiffs and their family members but this could not be done only because of the fact that the old and dilapidated suit premises is located on the very opening of the space and thus there is no means of ingress and egress to the vacant land situated behind the existing suit premises. With these facts, the plaintiffs filed a title suit for eviction of the defendants for bona-fide requirement of reconstruction. On being summoned the defendants appeared and contested the suit making usual objections to defend the proceeding u/s 5 of the Assam Urban Areas Rent Control Act and more particularly in the proceeding of eviction on the ground of bona fide requirement.

3. The learned Trial court framed as many as 5 (five) issues and issue No. 3 was the crux of the suit in regard to the bona fide requirement. Plaintiffs examined 4 (four) witnesses including himself whereas the defendants also examined 3 (three) witnesses. The learned Trial court found that existence of a vacant space at the back side of the suit premises has potentiality of construction of a market complex. The evidence of the parties was duly analyzed and thereupon it also came to light that one of the witnesses in the said building, namely, Dimbeshwar Bora had already agreed to shorten the tenanted premises for enabling the plaintiff to make new construction at the backyard of the suit premises. With these findings, the learned Trial court held that the plaintiffs succeeded to establish bona fide requirement for reconstruction and use of the suit premises and for the use of the vacant land belonging to them. The said judgment was passed on 25.01.2010 by the learned Munsiff, Tezpur.

4. Aggrieved, the defendants preferred title appeal No. 3/2010 in the court of learned Civil Judge, Sonitpur, Tezpur. The learned first Appellate court, after hearing the learned counsel for both the parties and on due perusal of the materials on record, passed judgment on 17.06.2010 dismissing the appeal and upholding the findings that plaintiffs have bona fide requirement for reconstruction. It is this judgment which has been brought under challenge in the present revision petition.

5. According to Mr. U Dutta, learned counsel for the petitioners, the plaintiffs have failed to prove that the need pleaded by them is a pressing one and not a mere desire. Learned counsel has placed reliance in the case of Bata India Ltd. and Others Vs. United Publishers and Another, . In paragraph 51 of the said judgment, this court held that plaintiffs, not having proved by adducing evidence, the approved plan and the steps taken by them for reconstruction of building the bona fide requirement for reconstruction was not proved and accordingly this court held that the landlord did not have bona fide requirement. Per contra, Mr. A Ganguly, learned counsel for the opposite parties, argued that

the bona fide requirement of the plaintiffs for reconstruction has been duly proved and it is already brought on record. That one of the tenants, namely, Dimbeshwar Bora duly cooperated with the landlord for the purpose of enabling them to go for reconstruction but the defendants herein who are enjoying the suit premises for more than half a century at a rental of meagre sum of Rs. 550/- (Rupees five hundred fifty) only had stood as stumbling block to the scheme for expansion of business space by reconstruction over the whole plot of land including vacant backyard space. Mr. A Ganguly has placed reliance in the case of Kushum Lata Kala Vs. Kumari Parul Saha, . In that case the tenants took a plea that landlord did not prove the financial capability to show that the plea of reconstruction was a genuine one. Relying on the Supreme Court judgment in the case of G.C. Kapoor Vs. Nand Kumar Bhasin and Others, this court held that financial capacity of the landlord for construction of the building by demolishing the suit premises for his bona fide requirement cannot defeat the genuine, honest and pressing need of the suit premises. In the case of G.C. Kapoor, the Hon"ble Supreme Court found that the objection in regard to financial capacity was in irrelevant consideration for the purpose of granting decree of eviction on the ground of bona fide requirement. The learned counsel Mr. Ganguly has already placed reliance in the case of Raghunath G. Panhale (Dead) By Lrs. Vs. M/s. Chaganlal Sundarji and Co., . In this case the Hon"ble Supreme Court held in paragraph 09 in the same tenor that a landlord is not required to adduce any evidence to prove his financial capacity and/or his readiness and willingness for making construction.

6. Having heard the learned counsel for the parties and on perusal of the materials on record it is clear that the findings of the learned court below in regard to need of the landlord for reconstruction of the suit premises so as to make use of the whole plot of land in the backyard space is based on materials on record. The defendants also did not dispute that there is potentiality of more commercially viable construction. Keeping in view the ground realities in regard to no objection certificate from appropriate authority and/or financial soundness for the purpose of materializing a scheme of construction, it is rather well known that approved plan of construction cannot be a pre-requisite for establishing bona fide requirement. An approved plan by the development authority/municipal authority for construction normally remains in force for one year and it automatically expires thereafter. In a suit for eviction of tenant under Assam Urban Areas Rent Control Act, it is a known experience that the suit proceeds for years together at various steps of the proceeding. Even in the present case the suit was instituted in the year 2006 and it took 8 (eight) years to get disposal from this High Court by this revision petition. Even if the plaintiffs would have obtained an approved plan in the year 2006, the same plan would not have been used when the proceeding has approached near the end. Moreover, once possibility of reconstruction and more commercially viable constructor is established based on materials available on record merely because plaintiffs did not obtain permission from the development authority/municipality for making

construction cannot be a disqualifying reason to disentitle the landlord from getting eviction. The logic followed by the Hon''ble Supreme Court while holding that establishment of financial soundness is not required for making out a case of bona fide requirement of reconstruction, the same logic can be applied in case of approved plan as well. The scope of availing financial aid from Bank and other institutions is a fact for which no elaboration is necessary. In an urban area when a vacant land is there the landlord can very well obtain permission of the appropriate authorities for the purpose of making a construction in appropriate time availing finance from Banks and such institutions. This being the position, I do not find any reason to interfere with concurrent findings of the two courts. This revision petition, therefore, is devoid of any merit.

7. At this stage Mr. U Dutta, learned counsel for the petitioners submits that if the landlord really intends to go for demolishing the house and to get new construction covered in backyard space then there should not be any objection from the side of landlord to accommodate the present petitioners, inasmuch as, the landlord shall have to let out the building or the suit premises to some or other intending business men. Mr. A Ganguly submits that if the petitioners intend to get an accommodation they shall be at liberty to enter into agreement with the landlord in due course. It is expected that the landlord shall accommodate the present petitioners in the building to be newly constructed keeping in view that they had been tenants under them for a period over half a century. It is needless to say that the petitioners shall be bound to make necessary payment as may be lawfully demanded by the landlord.

8. With these observations, this revision petition is disposed of with the following terms and conditions:

- i) That the petitioners shall vacate the suit premises within a period of 3 (three) months by removing of their belongings;
- ii) That the possession of the vacant land shall be handed over to the landlord and not to anybody else;
- iii) That the petitioners shall clear all the pending dues within the aforesaid period of 3 (three) months from today; and
- iv) the landlord shall start construction within a period of 6 (six) months after eviction and once the construction proceeds the opposite parties shall enter into an agreement with the present petitioners for accommodating them in suitable shop on mutually agreed terms.

9. No order as to costs.