
(2004) 02 GAU CK 0069

In the Gauhati High Court

Case No : WP (C) No's. 872 and 873 of 2004

Tarun Kr. Deb and Another

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 27-02-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 1 GLR 279 : (2004) 2 GLT 1249

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Advocate : Diganta Das, for the Appellant; G.A., for the Respondent

Final Decision : Dismissed

Judgement

B.K. Sharma, J.—These two writ petitions involve same set of facts by and between the same parties and the reliefs sought for are also the same. Thus they are taken up together for decision and disposal.

2. As per the disclosures made in the writ petition the petitioners are engaged in business and they are lawful lessee in respect of a plot of land covered by Dag No. 207 (old) 252 (new) under patta No. 99. In the year 1950 they constructed a RCC building consisting of ground floor upon the aforesaid plot of land in the name and style of M/s Deb Building. In 1970, remaining portion of the building was constructed. It is the case of the petitioners that the said building has been rented out to various parties and in the first floor, a branch of a nationalised Bank namely, "Bank of India" is located.

3. According to the averments made in W.P.(C) No. 872/04, sometime in the year 1986 the respondent No. 6 approached the petitioners for temporary accommodation for a period of 3 months for storing books of accounts and other official documents pertaining to his arms business in the name and style of M/s Rajdhani Gun House. Upon such request the petitioners allowed a room measuring about 341 sq. ft. in their said building. Likewise in W.P.(C) No. 873/04

it is the case of the petitioners that on being approached by the same very party sometime in 1993-94 for temporary accommodation for a period of 3 months for the same purpose relating to his arms Business under the name and style "North-Eastern Arm Company" the petitioners allowed another room in the same building measuring 80 sq. ft.

4. In W.P.(C) No. 872/04, it is the case of the petitioners that due to non-vacation of the room by the respondent No. 6, the relations between them became sore and the petitioners hardly visited the respondent No. 6. However, nothing has been stated in both the writ petitions as to why in spite of such bad relations, the petitioners accommodated the respondent No. 6 by letting out another room in 1993-94 and as to what they did to get the rooms vacated by the respondent No. 6.

5. It is the case of the petitioners that recently they have come to know that the said premises are not being used for the purpose for which the same were let out, but are being used for some other purposes, i.e., for storage of arms and ammunitions. On being approached, the respondent No. 6 could not give any satisfactory reply and he refused to shift the arms and ammunitions from the said two rooms. The petitioner could come to know that the respondent No. 6 had filed two writ petitions being Civil Rule No. 697/88 and Civil Rule No. 1219/88 pertaining to his licence of arms and ammunitions. Without specifying anything as to what happened to those two writ petitions, the petitioners have stated that they have since obtained certified copies of the said writ petitions, without, however, indicating anything as to when they did so. From the writ petitions, the petitioners could come to know that the respondent No. 6 while making application for licence to the Licencing authority mentioned the place of storing arms and ammunitions as "Goswami Building" which is separate and distinct than that of "Deb Building" belonging to the petitioners. Thus according to the petitioners there was misrepresentation on the part of the respondent No. 6. In W.P.(C) No. 873/04 which has been filed in -respect of the room let out to the said respondent No. 6 during 1993-94, a copy of the duly filled in application form allegedly submitted by the said respondent has been annexed as Annexure-II. As narrated above, the other room was let out in the year 1986. According to the petitioners, the said application clearly reveals that the respondent No. 6 had mentioned in column 10 A that "Goswami Building" was the place in which the arms and ammunitions would be kept and thus the said respondent misled the licencing authorities by suppressing the fact that it is the "Deb Building" belonging to the petitioners in which the arms and ammunitions would be kept. A bare perusal of the said application form reveals that the same was submitted on 01.03.1982, i.e., prior to hiring the premises of the petitioners. Thus there could not have been any occasion for the respondent No. 6 to mention "Deb Building" as the place for storing arms and ammunitions.

6. According to the petitioners, they upon getting the aforesaid information approached the Superintendent of Police, Kamrup, Guwahati for taking necessary

action against such alleged illegal storing of arms and ammunitions i their said rooms. Such approach was made by submitting a letter on 14.01.2004 with copies to the Secretary, Home; Deputy Commissioner and Officer-in-Charge, Panbazaar Police Station, Guwahati, as averred in the writ petition. However, the same has not yielded any result. Hence, the writ petitions praying for issuance of a direction to seal the premises in question and to refrain the respondent No. 6 from storing arms and ammunitions.

7. I have heard Mr. Dignta Das, learned counsel appearing for the petitioners and also the learned Senior Govt. Advocate, Mr. K.C. Mahanta. Mr. Das strenuously argued that inaction on the part of the respondents is arbitrary and illegal and a direction is called for to seal the premises and restrain the respondent No. 6 from storing arms and ammunitions. Mr. Mahanta on the other hand, submitted that the writ petition itself is not maintainable inasmuch as basically it is a civil and private dispute between the petitioners and the respondent No. 6 regarding the tenancy and the petitioners should seek his remedy elsewhere, if at all he is aggrieved by any action of the respondent No. 6

8. It is an admitted position that the premises in question were let out to the respondent No. 6 by the petitioners. Except making a statement that the same were let out for another purpose for a temporary period of 3 months, nothing has been produced regarding the tenancy. There is also no explanation as to why the second space involved in W.P.(C) No. 873/04 was let out to the respondent No. 6 after 8 years of letting out the first space involved in W.P.(C) No. 872/04 even after the relation between them allegedly became sore for non-vocation of first space and as to what the petitioners did all these years to get the premises vacated or to take action against the respondent No. 6 for alleged use of the premises for a purpose other than the one for which f he same was let out. Another significant revelation from Annexure-II annexed to the writ petition in W.P.(C) No. 873/04 is that the application for licence was submitted by the respondent No. 6 in the year 1982 (01.03.1982) which is much before occupation of the premises belonging to the petitioners in 1986 and 1993-94. There could not have been any occasion for the respondent No. 6 to mention in the application form the place of storing the arms and ammunitions as "Deb Building" belonging to the petitioners even 4 years before the tenancy began with the petitioners. The basic thrust of argument of Mr. Das is that there was suppression on the part of the respondent No. 6 while submitting the application for licence by mentioning another building as the place of storage of arms and ammunitions instead of "Deb Building". Such an argument is fallacious on the face of it and rather misplaced due to the actual factual position as noticed above.

9. The petitioner by invoking the writ jurisdiction of this Court cannot raise a dispute relating to his tenancy. The writ Court will not embark upon the tenancy agreement by an between the respondent No. 6 and the petitioner. If there is any violation of the terms of tenancy agreement, the remedy lies elsewhere. The petitions cannot invoke the writ jurisdiction for a collateral purpose. His basic

grievance, on the face it is the alleged violation of the terms of tenancy agreement by the respondent No. 6. If that be so, writ is not the remedy merely by impleading the official respondents. Nothing has been disclosed as to what he did for long 18 years of the tenancy and as to why he has not lodged any proper FIR as required under the law on the face of the allegation of illegal storage of arms and ammunitions in his premises. There is also no explanation as to why he has not approached the licencing authority for cancellation of the licence of the respondent No. 6 for alleged misrepresentation on his part regarding place of storage of arms and ammunitions. Merely by submitting the alleged letter to the Superintendent of Police on 14.01.2004 as reflected in the W.P.(C) No. 873/04 the petitioners have rushed to the Court by filing two writ petitions on 11.02.2004 alleging inaction on the part of the official respondents and seeking a direction to seal the said two premises and to restrain the respondent No. 6 from storing arms and ammunitions there. Such a course of action has been adopted by the petitioners for some undisclosed reasons and that too collaterally against the respondent No. 6 without giving any explanation as to what he had been doing for the last so many years. It is also unbelievable that the petitioners were not aware of the use of the premises by the respondent No. 6 for the purpose which according to the petitioners is other than the one for which they were let out. There is also no explanation as to why they allowed another space for occupation of the respondent No. 6 after 8 years of letting out the first space for non-vacation of which their relations allegedly became sore.

10. Mr. Das, learned counsel for the petitioner, placed reliance on a decision of the Apex Court as reported in (1989) 2 SCC 619 (Andi Mukta Sadguru v. VR Rudani) to emphasise the power of this Court towards issuance of Mandamus. The proposition laid down by the Apex Court is not in dispute. That was a case relating to entitlement of terminal benefits to the retrenched teachers of private aided College (public trust affiliated to University). It was in that context the writ petition was " held maintainable. However, the same is not the case here. He also referred to a decision of the Calcutta High Court as reported Anil Krishna Pal Vs. State of West Bengal and Others, to bring home his point of argument that it is the inaction on the part of the official respondents which is under challenged in this writ proceeding.

11. I have gone through the aforesaid decisions. While there is no disagreement about the power of this Court towards issuance of writ of mandamus, it is to be seen as to whether the instant case is a fit case to exercise that power. As already noticed above, the petitioners by filing the instant writ petition have sought for enforcement of their alleged tenancy agreement in terms of which the respondent No. 6 is not entitled to use the premises in question for the purpose for which the same are being used by him.

12. In the case (Anil Krishna Pal v. State of West Bengal and Ors.) Culcutta, (supra) the judgment was delivered in the fact situation of that case and could not be made universally applicable to all cases. That was a case relating to

failure on the part of the public authorities to discharge their function. However, in the instant case, although the petitioners have given the colour of failure on the part of the official respondents to discharge their duty, but in fact they have sought the remedy against the respondent No. 6. Such a course of action cannot be allowed to be achieved collaterally by entertaining the writ petitions filed by the petitioners. Needless to say that the ratio of a decision is available on the facts and background of that case. The said decision is not at all applicable to the case in hand.

13. There are also inherent infirmity in the assertion made by the writ petitioners to establish their case. According to the statements made in the writ petitions, after letting out the space involved in W.P.(C) No, 872/04 for a period of 3 months and when the same was not vacated by the respondent No. 6 there relation became sore. However, the same very petitioners acceded to the request of the respondent No. 6 by letting out the second space involved in W.P.(C) No. 873/04 in the year 1995-94 which is about 8 years after the first room was let out. Nothing has been disclosed as to what action was taken against the respondent No. 6 for his alleged violation of the tenancy agreement. The application form allegedly submitted by the respondent No, 6 for obtaining the licence mentioning the place of storage of arms and ammunitions as "Goswami Building" was much before hiring the said two premises from the petitioners and thus there was no occasion on the part of the respondent No. 6 to mention the building of the petitioners to be the place of storage of arms and ammunitions.

14. Leaving aside all the above details, the basic question involved in the writ petition is that as to whether the writ petitions are maintainable. As already observed, the petitioners have virtually sought the relief against the respondent No. 6 who is admittedly their tenant. For violation of terms of tenancy agreement the petitioners have got other remedy as provided for under the law and cannot invoke the writ jurisdiction for collateral purpose as has been done in the instant case. The petitioners have not also chosen to file any FIR nor have approached the licencing authority towards cancellation of the licence of the respondent No. 6, but has approached this Court invoking writ jurisdiction for undisclosed reasons.

15. The present proceeding involves the assertion or enforcement of a civil right of the petitioners requiring them to go for civil proceeding. Resorting to the jurisdiction under Article 226 of the Constitution of India is not intended as an alternative remedy for relief which may be obtained by Civil proceeding or by other mode prescribed by statute. The rules pertaining to prudence and discretion in the matter of exercising the writ jurisdiction demand ascertainment as to whether it is open to the aggrieved person to move another jurisdiction for redressal of his grievance or not. The High Court will not entertain the writ petition bypassing the other authorities. Wide enlargement of the writ jurisdiction must be tempered by wise limitation. In the instant case, the writ petitioners have filed the above two petitions basically seeking relief against the respondent

No. 6, the private respondent and that too relating to the tenancy agreement with him. Although the official respondents have been impleaded with alleged negligence on their part, except annexing a copy of the alleged letter dated 14.01.2004 purportedly addressed to the Superintendent of Police, Guwahati, nothing has been shown as to what remedial measures the petitioner adopted in respect of their alleged grievances for the last so many years. Before seeking a writ of mandamus, the party must establish that valid prayers were made before the appropriate authority towards redressal of their grievance but the said authority refused to act on the prayer so made. Even that aspect of the matter is absent in the instant case which naturally disentitles the petitioners to invoke the writ jurisdiction of this Court. The object of Article 226 of the Constitution of India is the enforcement and not the establishment of a right. Such a petition cannot be converted into a suit.

16. In view of the above discussions, I do not find any merit in both the writ petitions warranting any interference in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India. Accordingly the same are dismissed in limine. Before parting with the case records I make it clear that the dismissal of the writ petitions will not preclude the petitioners from taking recourse to initiate such other proceeding as may be admissible to them including their right to move the appropriate authorities towards redressal of their alleged grievance.

17. There shall be no orders as to cost.