

# THE HIGH COURT OF MEGHALAYA

## W.P. (C) No.252/2014

Shri. Josimuddin Ahmed,  
S/o Shri. M. Ahmed,  
R/o Oakland, Shillong, East Khasi Hills District,  
Meghalaya. :::: Petitioner

-Vs-

1. State of Meghalaya represented by Secretary (Home),  
Police Department, Govt. of Meghalaya.

2. The Superintendent of Police  
East Khasi Hills, Meghalaya.

3. The Officer-in-Charge,  
Sadar Police Station, Shillong.

4. Shillong Muslim Union represented by its  
General Secretary,Ed-Gah Complex,  
Laban, Shillong-793004, District East Khasi Hills,  
Meghalaya.

5. The Secretary, Shillong Muslim Union,  
Ed-Gah Complex, Laban, Shillong-793004,  
District East Khasi Hills, Meghalaya.

6. Shri. Jonathan Giri,  
S/o Smt. R Giri, R/o Laitumkhrah, Shillong,  
East Khasi Hills District, Meghalaya. :::: Respondents

### BEFORE THE HON'BLE MR. JUSTICE T NANDAKUMAR SINGH

For the petitioner : Mr. MF Quershi, Adv,  
For the respondents : Ms NG Shylla, GA for respt.No.1-3  
Ms. R Gurung, Adv for respt.No.4 & 5  
Mr. N Mozika, Adv for respt.No.6  
Date of hearing : **29.09.2015**  
Date of Judgment : **29.09.2015**

## JUDGMENT AND ORDER (ORAL)

Heard Mr. MF Qureshi, learned counsel for the petitioner, Ms. NG Shylla, learned GA appearing for the respondents No.1-3, Ms. R Gurung, learned counsel for the respondents No.4 & 5 and Mr. N Mozika, learned counsel for the respondent No.6.

**2.** The prayer sought for in the present writ petition is for a direction to the respondent No.3 i.e. Officer-in-Charge, Sadar Police Station to restore the possession of the rented premises to the petitioner and also for further direction to award adequate compensation to the petitioner by the respondents No.4 & 5. At the very outset, it appears that this writ petition is a suit for recovery of possession but in disguise of writ petition. A suit for recovery of possession is to be filed in the civil court and not by way of writ petition. By the skilful drafting of the writ petition one cannot invoke the jurisdiction of this Court under Article 226 of the Constitution of India for a matter which comes within the exclusive jurisdiction of the civil court.

**3.** The concise fact of the case leading to the filing of the present writ petition is noted. The petitioner and one Shri.Rehmat Ali Dhannani, a Kolkata based businessman formed a private business organization under mutual understanding in the name and style of M/s Star Plaza Shopping Complex at G.S. Road, Police Bazar, Shillong. The respondent No.4 is a registered society formed by the members of the Muslim Community residing at Shillong and also had its Memorandum of Association. The society-respondent No.4 also has landed property situated at Quinton Road, Shillong. It is further stated that the respondents No.4 & 5 agreed to let out the 1<sup>st</sup> and 2<sup>nd</sup> floors of their building situated in Holding No.16 at Quinton Road, Shillong to the petitioner on rent. For letting out the said premises to the petitioner by the respondents No.4 & 5, they had entered into a Tenancy

Agreement dated 02.06.2007 and copy of the said Tenancy Agreement is available at Annexure-I to the present writ petition. For easy reference, the said Tenancy Agreement dated 02.06.2007 is quoted hereunder:-

### **“TENANCY AGREEMENT**

*This agreement is made on this 2<sup>nd</sup> day of June 2007 between “THE SHILLONG MUSLIM UNION”, Shillong represented by its General Secretary Jb Sayeedullah Nongrum, herein – after called the FIRST PARTY, which terms unless repugnant to the context shall always mean and include his successor in the office, on the one part AND M/s Star Plaza G.S. Road, Shillong represent by Josimuddin and Partner Rehmat Ali Dhanani, Shillong called the SECOND PARTY on the other part.*

*WHERE AS THE FIRST PARTY is the owner and is in absolute physical possession of a multi-storeyed R.C. building situated at Quinton Road, Shillong-1 covered by the Municipality Holding number 16 of Police Bazar Ward and commonly known as “SHILLONG MUSLIM UNION GUEST HOUSE PROPERTY”.*

*Where as the FIRST PARTY had demised the 1<sup>st</sup> and 2<sup>nd</sup> floor of the above Shillong Muslim Union Community Hall building at Quinton Road, Shillong to the SECOND PARTY at a monthly rent of Rs. 20,000/- (Rupees Twenty thousand) for 1<sup>st</sup> Floor and Rs. 15,000/- (Rupees Fifteen thousand) only for the 2<sup>nd</sup> Floor i.e. Total Rs. 35,000/- (Rupees Thirty five thousand) only. The Second Party should construct the above 2(Two) floors, which should be completed within 31<sup>st</sup> of December, 2007 and his tenancy will come into effect from 1<sup>st</sup> of January, 2008.*

*WHERE AS THE FIRST PARTY will be adjusted @ Rs. 15,000/- (Fifteen thousand) only from his monthly rent against the total cost of construction which will be decided as per agreement at the rate of Rs. 450/- per sq.ft and an amount of Rs. 20,000/- (Twenty thousand) only will be paid by him every month regularly. After adjustment of entire amount rent will be fixed as per prevailing market rate which will be minimum 10% for every three years.*

*NOW THEREFORE, THIS TENANCY AGREEMENT WITNESSETH AS FOLLOWS:-*

*1) That the tenancy between the PARTIES in respect of the aforesaid room shall be monthly one and from month to month according to the ENGLISH CALENDAR month, commencing from the beginning of the month and ending with the end of the month and shall henceforth be for a period till agreement of his cost of construction.*

2) That the SECOND PARTY shall be personally responsible to pay the monthly rent to the FIRST PARTY within the 7<sup>th</sup> of every month in its office and to obtain money receipt duly signed by the FIRST PARTY, failing to pay monthly rent and allowing to accumulate the same willfully due to non payment without any valid reason and written permissions, the FIRST PARTY, shall be at liberty to impose penalty @ 2% per month over the arrear rent payable which shall be recovered as an arrear rent.

3) That the SECOND PARTY shall provide individual electric installation with good quality materials to avoid risk of fire in the room at his own cost and arrange to pay monthly bill for electric charges directly to the Me.S.E.B to which, the first party shall be compelled to instruct the Me.S.E.B. to disconnect the supply line as per terms of the affidavit furnished by the FIRST PARTY for the purpose of installation of direct supply line to the room.

4) That the SECOND PARTY shall not use the demise premises for any un-Islamic unsocial purposes whatsoever, which may hurt the religious sentiments of the Muslim public.

5) That the SECOND PARTY shall not sublet the room/premises or any portion thereof to any person/persons whatsoever and make any addition or alternation without the written and prior permission of the FIRST PARTY.

6) That the SECOND PARTY shall keep the room and its premises neat and clean, carry out white washing annually maintenance and repairs in workman like manner at his own cost in a good and tenantable conditions. He shall not do any such thing which may cause physical to the property and endanger the safety of the occupants, making himself liable to compensate the loss.

7) That subject to good and satisfactory conduct of all the terms and conditions aforesaid by the SECOND PARTY and if the aforesaid room and its premises are not otherwise required by the FIRST PARTY, the tenancy shall be renewed for a subsequent term for a period not exceeding 3(three) years as per provision of the Wakf Act, 1995.

8) That, the breach of any or more of the aforesaid terms and conditions of this agreement shall entitle the FIRST PARTY to terminate the tenancy, cancel the allotment of the room by giving the SECOND PARTY a notice to vacate the room with a period of 30(Thirty) days from the date of issue of the notice to recover the room.

9) **That, the First Party got the liberty to increase the monthly rent.**

The rent will be enhanced in proportion to the prevailing market rate. The minimum rent thus increased by 10 to 15% after completion of every three years.

*Any earlier agreement whatsoever is stand cancelled with immediate effect.*

*10) The Ground floor car parking allowed to him subject on community hall function if any, that time the parking of vehicle will be managed by him.*

*IN WITNESS WHEREOF, The parties here to sign this deed of Tenancy Agreement on this date, month and year above mentioned.*

Sd/-  
FIRST PARTY  
(SAYEEDULLAH NONGRUM, MLA)  
GENERAL SECRETARY, SMU

Sd/-  
SECOND PARTY  
(M/s. Star Plaza, represent by Jaismuddin  
and Partner Rahmat Ali Dhanani

WITNESS

- 1.
- 2.

4. As the petitioner had an apprehension that he may be evicted by the respondents No.4 & 5 from the said premises forcibly, the petitioner filed Title Suit being T.S. No.2(H) of 2010 against the respondents No.4 & 5 in the Court of the Assistant District Judge, Shillong. The relief sought for in the said civil suit i.e. T.S. No.2 (H) of 2010 reads as follows:-

*“In the premises aforesaid, the plaintiff prays for a decree for;*

- i) for declaration that the Defendants are legally bound to continue with the Tenancy Agreement dated 02.6.2007 as the Plaintiff remains the lawful Tenant under them;*
- ii) that the Defendants are not entitled to terminate the Tenancy and in that view the contract for construction as well;*
- iii) that the Resolution dated 05.2.2010 as adopted by the Defendant No. 1 in its meeting held on 05.2.2010 is illegal inasmuch as they as the landlord are bound to maintain essential supply to the accommodation so tenanted out to this plaintiff and the Defendant cannot take the plea as taken illegally to terminate the Tenancy Agreement;*
- iv) Permanent injunction restraining the Defendants or their agents and officials or anybody claiming through them from reallocating the Tenancy accommodation to any other third party till the matter is settled legally and not to disturb the plaintiff in their possession in the tenanted*

*accommodation in the said 3 (three) floors constructed by the Plaintiff;*

v) *Cost of the Suit and*

vi) *Any other relief or reliefs to which the Plaintiff is found entitled under law*

*And*

*For which act of kindness, the plaintiff shall ever pray.”*

5. It is admitted case of both the parties that the said suit i.e. T.S. No.2 (H) of 2010 had been dismissed for default on 29.05.2014. It is also admitted fact of both the parties that the said suit i.e. T.S. No.2 (H) of 2010 has not yet restored to the file. It is stated that the petitioner filed an ejahar dated 04.06.2014 to the Officer-in-Charge, Sadar Police Station that due to non-supply of electricity by the landlord, the undersigned (petitioner) was not in a position to run the business. The electricity was not supplied to him (petitioner) by the Electricity Board because the arrear of electricity bill was not paid by the landlord. Therefore, police had been requested to look into the matter and take preventive action so that the landlord may not be able to throw him (petitioner) out of the said premises without following due process of law. It is the submission of Mr. N Mozika, learned counsel for the respondent No.6 that the matter of non-supply of electricity to the petitioner by the landlord is to be taken up by the concerned authority i.e. Me.E.C.L. and not by the police. It is not the police who has to take up steps for preventing the respondents No.3 and 4 from throwing out the petitioner from the rented building without following due process of law inasmuch as, the police is not to intermingle with the matter of pure civil nature. He further stated that this matter is to be taken up by the civil court having the competent jurisdiction to take up the matter relating with landlord and tenant. The petitioner should approach the civil court by filing a civil suit accompanied with an application for temporary injunction for preventing the

landlord from taking up steps to evict the petitioner from the rented premises without following due process of law. It is admitted case of both the parties that the petitioner is no more in occupation of the rented premises.

6. It is the further case of the petitioner that the police i.e. the respondent No.3 was only a silent spectator inasmuch as, the respondent No.3 did not take up any steps from preventing the respondents No.4 & 5 for evicting the petitioner from the rented premises without following due process of law. This Court had made observations in the aforesaid paras that this matter is to be taken up by the civil court having jurisdiction to deal with the matter relating with landlord and the tenant. The police can take up steps only for maintenance of law and order. In the writ petition there is not even a whisper that the landlord with the assistance of the police had forcibly evicted the petitioner from the rented premises. As stated above, the only case of the petitioner against the respondent No.3 i.e. Sadar Police Station is that police was only a silent spectator in the matter of disputes between the petitioner and the respondents No.4 & 5. The police cannot transgress the matter which had already been taken up by the civil court i.e. T.S. No.2(H) of 2010 between the landlord and the tenant. In other words, the respondent No.3 should not take up the matter of civil nature i.e. matter of disputes between the landlord and the tenant. Mr. MF Qureshi, learned counsel for the petitioner in order to support the case of the petitioner relied heavily on the decision of the Apex Court in ***Shalini Shyam Shetty & Anr v. Rajendra Shankar Patil*** reported in ***(2010) 8 SCC 329***. On careful perusal of the case i.e. ***Shalini Shyam Shetty's*** case (*Supra*), it is clear that the fact of the case is completely different from the fact of the case in the present writ petition. This Court for the sake of repetition, it is reiterated that there is no pleadings in the writ petition that there was a collusion between the landlord and the respondent No.3 in evicting the petitioner from the rented premises. As

stated above, the case of the petitioner against the respondent No.3 is that the respondent No.3 was only a silent spectator in the matter of civil disputes between the petitioner and the landlord. This being the situation, this Court is of the considered view that there is nothing wrong on the part of the respondent No.3 in not interfering in the matter of civil disputes between the petitioner and the landlord.

7. For the foregoing reasons, there is no merit in the present writ petition and accordingly dismissed. However, it is left to the petitioner to seek appropriate remedy under the appropriate forum i.e. before the civil court.

**JUDGE**

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