

THE HIGH COURT OF TRIPURA
A G A R T A L A

CRP No.133 of 2015

Smt. Shiuli Sengupta,
wife of late Sajal Sengupta,
Proprietor of Radio Electronics,
Mantri Bari Road, P.S. West Agartala,
District – West Tripura

.....Petitioner

- Vs -

Smt. Sandhya Basak,
wife of late Jadu Gopal Basak,
resident of Motor Stand, P.S. East Agartala,
District-West Tripura

.....Respondent

**BEFORE
THE HON'BLE MR. JUSTICE S. TALAPATRA**

Advocate for the petitioner : Mr. S. M. Chakraborty, Sr. Advocate
Mr. K. Dutta, Advocate

Advocate for the respondent : Ms. S. Deb Gupta, Advocate

Date of hearing : **01.04.2016**

Date of delivery of Judgment & order : **31.05.2016**

Whether fit for reporting : **YES**

JUDGMENT & ORDER

To question the legality of the judgment and order dated 04.08.2015 delivered in RCC (Revision) No.04 of 2014 by the District Judge, West Tripura, Agartala [the revisional authority for exercising the powers as provided under Section 22 of the Tripura Building (Lease & Rent Control) Act, 1975] this petition under Article 227 of

the Constitution of India has been filed by the tenant, the petitioner herein.

02. Mr. S. M. Chakraborty, learned senior counsel appearing for the petitioner has raised two pronged objections. Firstly, while passing the impugned judgment dated 04.08.2015, the revisional authority has exceeded its jurisdiction by appreciating the fact in order to reach to a finding of reversal. Section 22(1) of the Tripura Building (Lease and Rent Control) Act, 1975, RCC Act in short, provides as under:

"22(1) In cases where the appellate authority empowered under section 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 or proceedings, and may pass such order in reference thereto as it thinks fit."

03. By the impugned judgment dated 04.08.2015, the revisional authority has observed as under:

"11. The learned Appellate Court in dealing with the issue held that the landlady did not try to adduce any evidence to show that any other suitable building is available in the locality to carry on such type of business by the tenant. But in para 7 of the affidavit in chief, the petitioner has deposed that there was alternative accommodation available in the locality for running the business of tenant O.P. So, finding of the learned Appellate Authority at para 8 of the judgment that the appellant landlady did not try to adduce any evidence to show that there was any other suitable building available in the locality of the suit premise for carrying such trade or business by the tenant is incorrect."

12. Hon'ble High Court of Tripura in its judgment in W.P.(C) 393 of 2005 dated 17.04.2014 after taking into consideration the evidence on record and the findings of the courts below and also the submission made from

both sides first held that His Lordship did not agree with the submission of the learned counsel that the Revision Court exceeded its jurisdiction prescribed under Section 22 of the Act in interfering with the concurrent findings of the courts below considering the provision prescribed in proviso to sub section 3 of Section 12 of the Act in favour of the tenant. In this regard, at para 14 of the judgment it is further observed that under the provision just mentioned, it was the tenant who has to prove that no suitable accommodation is available in the locality to carry on his trade or business. His Lordship went further and observed that there was no cogent pleading or evidence that the tenant made a serious search in the locality for an alternative accommodation but such an accommodation was not available. At para 20 of the judgment it is observed finally that once the landlord established his bonafide need of the suit premise, the proviso to sub section 3 of Section 12 of the Act shall be applied by the Rent Control Court only when tenant has proved that he made a serious attempt for an alternative accommodation to run his trade or business but found none. It was further observed that in the absence of any such circumstance, the Rent Control Court should not take an easy approach of discarding the claim of a landlord simply on the ground that the business of the tenant in the tenanted premise is the only source of livelihood of the tenant for which the landlord cannot get back the possession of the tenanted premise.

13. In consideration of the findings of the Hon'ble High Court in the case aforesaid, facts situation of which is similar to the case in hand, I am of the considered opinion that both the findings of the learned Rent Control Courts are liable to be quashed and set aside."

04. Mr. S. M. Chakraborty, learned senior counsel appearing for the petitioner has emphatically submitted that the onus of proving that any other suitable building available in the locality of the suit premises for carrying such trade or business by the tenant has been shifted to the tenant from the landlady. He has further submitted that the decision of this court (***judgment dated 17.04.2014 delivered in W.P.(C) No.393 of 2005 in the matter of Haricharan Debnath vs. Mukunda Das Roy Chowdhury***) is not the correct reading of the second proviso to sub section 3 of Section 12 of the

RCC Act. In this regard, he has submitted that the purpose of the Rent Control Act is primarily to give protection to the tenants. To nourish his submission in this line, Mr. Chakraborty, learned senior counsel has relied on a decision of the apex court in ***Liaq Ahmed and others vs. Habeeb-Ur-Rehman*** reported in **(2000) 5 SCC 708** where the apex court has approvingly relied on ***Mangat Rai vs. Kidar Nath*** reported in **(1980)4 SCC 276**. For purpose of reference, the passages as relied are extracted hereunder:

"2. Rent control legislations have been acknowledged to be pieces of social legislation which seek to strike a just balance between the rights of the landlord and the requirements of the tenants. Such legislations prevent the landlords from taking the extreme step of evicting the tenants merely upon technicalities or carved grounds. This Court IN *Mangat Ram v.* [1981]1SCR476 held that where the Rent Acts afford a real and sanctified protection to the tenant, the same should not be nullified by giving a hyper-technical or liberal construction to - the language of the statute which instead of advancing the object of the Act may result in its frustration. The Rent Acts have primarily been enacted to give protection to the tenants.

3. The history of the legislation regarding Rent Controls in the country would show that the Rent Acts were enacted to overcome the difficulties arising out of the scarcity of the accommodation which arose primarily due to the growth of industrialisation and commercialization and inflow of the population to the urban areas. Such legislations were initially confined to the big cities like Bombay, Calcutta and Rangoon but their jurisdiction was gradually extended to other areas in the country. Because of scarcity of the accommodation and gradual rise in the rents due to appreciation of the value of urban properties, the landlords were found to be in a position to exploit the situation for their unjustified personal gains which were consequently detrimental to the helpless tenants who were subjected to uncalled for litigation for eviction. It thus became imperative for the Legislature to intervene to protect the tenants against harassment and exploitation by the landlords for which appropriate legislations came to be passed by almost all the States and Union Territories in the country with the paramount object of essentially safeguarding the interest of tenants and for their benefit. The Rent Acts also made provision

for safeguarding the interests of genuine landlords. The Rent Acts are intended to preserve social environment and promote social justice by safeguarding the interests of the tenants mainly and at the same time protecting the legitimate interests of the landlords. The provisions of the Rent Acts are, therefore, not required to be interpreted in a hyper-technical manner which in cases may result in frustrating the object for which the legislation was made. It should be kept in mind that the Rent Acts undoubtedly lean more in favour of the tenants for whose benefits they were essentially passed. The rational approach in interpreting the law relating to the control of rents is expected from the courts dealing with the cases under the statutes relating to rent by keeping in mind the object of the legislation intended to provide social justice preventing unscrupulous landlord to exploit the circumstances and force the tenants to submit to their pressure under the threat of eviction.”

05. A reading of the passages as extracted has clearly shown the Rent Act being a piece of social legislation which seeks to strike a just balance between the rights of the landlord and the requirements of the tenants. Such legislations prevent the landlords from taking the extreme step of evicting the tenants merely upon technicalities or curved out grounds and thus the provisions of the Rent Act are therefore not required to be interpreted in a hyper technical manner which in cases may result in frustrating the object for which the legislation was made inasmuch as the Rent Act leans more in favour of the tenants for whose benefits they are essentially passed. No doubt the apex court was not oblivious to record that the object of the legislation is to provide social justice preventing unscrupulous landlord to exploit the circumstances and force the tenants to submit to their pressure under the threat of eviction.

06. There is no dispute that both the trial court by the judgment and order dated 07.05.2012 delivered in RCC No.03 of

2011 as well as the appellate Court by the judgment and order dated 27.09.2013 delivered in RCC Appeal No.02 of 2012 rejected the prayer for eviction by dismissing the petition filed by the landlady being RCC 03 of 2011 on the ground of *bona fide* requirement. There are ancillary facts placed by the tenant that she invested a huge amount to the extent of rupees ten lacs for repairing the suit premises as she was given indication that she would be allowed to purchase the suit premises. Primarily, the following basic issues were framed by the RCC Court. (1) Whether the suit premises is *bona fide* required by the landlady for commencing a business by her son and (2) Whether the tenant is dependent on the income derived from the suit premises and there is no other similar accommodation for the tenant OP to carry on her business.

07. Even though the RCC Court has held that on the basis of the series of apex court judgments it has been asserted that the landlord is the best judge to decide his *bona fide* requirement and no tenant can ordinarily have any say on his requirement. However, the need of the landlord must be genuine and should not be a mere fanciful desire. By holding that the landlady is entitled to start a new business for her son, the plea of *bona fide* need has been accepted by the trial court but while deciding whether the tenant is dependent on the income derived from the suit premises and whether there is any other similar accommodation for the tenant to carry on her business, the trial court has observed that in terms of the second proviso of sub section 3 of Section 12 of the RCC Act which postulates that the Rent

Control Court shall not give any direction to put the landlord in possession, if such tenant is depending for his livelihood mainly on the income derived from any trade or business from such building and there is no other suitable building available in the locality for such person to carry on such trade or business.

08. Such finding of the trial court based on which the trial court denied to put the landlady in the possession has been affirmed by the appellate court observing as under:

"Moreover, from the evidence on record it reveals that the appellant landlady did not try to adduce any evidence to show that there was any other suitable building available in the locality of the suit premises for carrying such trade or business by the respondent tenant and as such going through the entire LC records I am of the opinion that learned Rent Control Court decided the issue No.2 in favour of the appellant landlady but rigidly did not pass any order of the eviction against the respondent tenant from the suit premises as prayed for by the appellant landlady keeping the aforesaid provisions of law in mind."

Having returned such finding the appeal filed by the landlady was dismissed by affirming the judgment and order passed by the Rent Control Court on 07.05.2012.

09. Being aggrieved by the said appellate judgment and order dated 27.09.2013 the landlady, the respondent herein, filed a revision petition under Section 22 of the RCC Act raising objection that the finding as returned by the trial court as well as by the appellate court that there is no other accommodation in the locality of the suit premises is perverse and based on no evidence. According to the landlady, she never admitted there is no suitable building in the

locality of the suit premises. What has been stated is that, that the tenant is dependent on the income derived from the suit premises. By the impugned judgment, the revisional authority has observed that the tenant has not filed any appeal against the finding of the Rent Control Court that the bona fide requirement or need of the landlady has been established. However, the Rent Control Court has denied to allow the petition only on the ground that the tenant is dependent on the income of the suit premises and there is no suitable building in the locality of the suit premises for carrying on her business.

10. While recognising that the concurrent finding may not be ordinarily disturbed by the revisional authority, but in extreme cases where the evidentiary materials have been weighed wrongly, the revisional authority can exercise its jurisdiction and pass such judgment as is appropriate in the circumstances of the case. By the impugned judgment, it has been observed by the revisional authority that the Rent Control Court has observed that the evidence of OPWs is believable as PW-1 and PW-2 admitted and stated in the cross-examination that the OP is dependent on the income derived from the suit premises. Accordingly, the issue is decided in favour of the tenant. But on scrutiny of the evidence the revisional Court has mentioned as under:

"..... the learned Court below missed the point that PWs.1 and 2 did not admit that there is no other similar accommodation for the tenant O.P. to shift her business there. Thereafter, coming to the issue no.(IV) relating to the reliefs, learned court held that issue no.(III) having been decided in the negative that the O.P. is dependent on the income derived from the tenanted premise and there is no other similar accommodation for the tenant

O.P. to establish the business therein, dismissed the application."

11. After recording this, the revisional court has further observed that:

"But in para 7 of the affidavit in chief, the petitioner has deposed that there was alternative accommodation available in the locality for running the business of tenant O.P. So, finding of the learned Appellate Authority at para 8 of the judgment that the appellant landlady did not try to adduce any evidence to show that there was any other suitable building available in the locality of the suit premise for carrying such trade or business by the tenant is incorrect."

12. The final question that falls for consideration of this court is that in terms of the second proviso provided below Section 12(3) of the RCC Act is that it is whose onus to prove that there is no other suitable building available in the locality for such person to carry on such trade or business. In the circumstances by the impugned judgment the revisional authority placed its reliance on the decision of this court in ***Haricharan Debnath vs. Mukunda Das Roy Chowdhury*** where it has been laid that the fundamental onus lies with the tenant to plead and prove the non-availability of the suitable accommodation when the landlord established his *bona fide* need of the suit premises. It is the onus of the tenant to proof that he had made serious attempt for an alternative accommodation to carry on his trade or business, but he found none. It has been also observed in the said decision that *"In absence of any such circumstances, the Rent Control Court should not take an easy approach of discarding the claim of a landlord simply on the ground that the business of the tenant in the tenanted premises is the only source of livelihood of the*

tenant and hence, the landlord cannot get back the possession of the tenanted premises.” The similar view has been returned by the revisional authority.

According to Mr. Cakraborty, learned senior counsel, this is absolutely a hyper-technical approach and not in accordance with the object for which the RCC Act has been enacted.

13. Ms. S. Deb Gupta, learned counsel appearing for the respondent-landlady has robustly made her submission that the law as laid down in ***Haricharan Debnath vs. Mukunda Das Roy Chowdhury*** is a balancing act between the interest of the tenant and the right of the landlord. She has reiterated the interpretation as provided in ***Haricharan Debnath vs. Mukunda Das Roy Chowdhury***. For purpose of reference, the relevant passages are extracted hereunder:

“19. In the case of Mohd. Ayub & Anr. V. Mukesh Chand reported in AIR 2012 SC 881 the question of bona fide need and comparative hardship has been reiterated by the Apex Court and the Court has held –“It is well settled that the landlord’s requirement need not be a dire necessity. The Court cannot direct the landlord to do a particular business or imagine that he could profitably do a particular business rather than business he proposes to start. It was wrong on the part of the District Court to hold that the appellants’ case that their sons want to start the general merchant business is a pretence because they are dealing in eggs and it is not uncommon for a Muslim family to do the business of nonvegetarian food. It is for the landlord to decide which business he wants to do. The Court cannot advise him. Similarly, length of tenancy of the respondent in the circumstances of the case ought not to have weighed with the Courts below.”

20. In view of the legal position discussed above, I am of considered opinion that the landlord-respondent while established his bona fide need in ordinary course, he is entitled to get vacant possession of the tenanted

premises. The second proviso to sub Section (3) of Section 12 shall be applied by the Rent Control Courts only when the tenant proved the case with all reasons that he has made a serious attempt for an alternative accommodation to run his trade or business and that no such alternative accommodation was available. In absence of any such circumstances, the Rent Control Court should not take an easy approach of discarding the claim of a landlord simply on the ground that the business of the tenant in the tenanted premises is the only source of livelihood of the tenant and hence, the landlord cannot get back the possession of the tenanted premises. If that proposition is accepted, no landlord will be in a position to get back the tenanted premises even in case of his bare necessity."

14. Ms. Deb Gupta, learned counsel has also relied on a decision of the apex court in ***Krishna Kumar Rastogi vs. Sumitra Devi*** reported in **(2014) 9 SCC 309** where the apex court while considering the similar aspect and on relying on ***Mohd. Ayub and Anr. vs. Mukesh Chand*** reported in ***AIR 2012 SC 881*** has laid down the law as under:

"12. In para 17 of the case of Ayub Khan (supra), this Court further observed:

"17. It is also important to note that there is nothing on record to show that during the pendency of this litigation the respondent made any genuine efforts to find out any alternative accommodation".

13. In *Rishi Kumar Govil v. Maqsoodan and Ors.* (2007) 4 SCC 465, on the plea and evidence relating to bona fide need of landlord, this Court in para 19 observed as under:

"19. In *Ragavendra Kumar v. Firm Prem Machinery & Co.*, (2000) 1 SCC 679: AIR 2000 SC 534, it was held that it is the choice of the landlord to choose the place for the business which is most suitable for him. He has complete freedom in the matter. In *Gaya Prasad v. Pradeep Srivastava*, (2001) 2 SCC 604: AIR 2001 SC 803 it was held that the need of the landlord is to be seen on the date of application for release. In *Prativa Devi v. T. V. Krishnan*, (1996) 5 SCC 353 it was held that the landlord is the best judge of his requirement and

courts have no concern to dictate the landlord as to how and in what manner he should live."

14. In the present case, on going through the papers on record we find that the High Court has given too much emphasis to the affidavit filed by the witness Vijay Pratap Singh that the appellant attempted to sell disputed shop to him. It is relevant to mention here that the said fact was denied by the appellant. In our opinion, merely for the reason that some witness has stated that the landlord attempted to sell the property his statement cannot be said to be reliable, as has been believed by the High Court or the Appellate Court, unless such fact is supported with documentary proof. There appears no document on record to support the bald statement of the witness Vijay Kumar Singh to dislodge the case of bona fide requirement of the shop claimed by the appellant for his son who was unemployed."

[Emphasis supplied]

On the basis of those findings, the apex court directed eviction of the tenant.

15. What is surprising in this case is that both the Rent Control Court and the appellate court have read the evidence in a selective manner. While recording the admission of the petitioner and her son (PWs.1 and 2) they have recorded the purported admission that a suitable building in the locality where the tenant can shift her business was not available. The revisional authority has justly observed that no such admission is there, rather there is a statement that in the locality suitable buildings are available. In this respect, the concept of onus is well acknowledged, even if it is read with the second proviso below Section 12(3) of the RCC Act. In such circumstances, after discharge of the initial onus by the landlord/landlady, it shall invariably shift to the tenant to prove that such statement made by the landlady is hoax and in reality no such building is available in the locality. No such attempt has been taken

by the tenant and as such this court does not find any infirmity in the impugned order having due regard to the law as enunciated by the apex court and by this court and the act of balancing as proposed in ***Mangat Rai vs. Kidar Nath*** has been perfectly observed.

In the result, this petition stands dismissed. However, there shall be no order as to costs.

JUDGE

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