

GAHC010121952018



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP 70/2018

1:JOYLAL GHOSH
S/O LATE HIRALAL GHOSH
TILAK MARKET
NOONIA PATTY ROAD
NA-PUKHURI
P.O AND P.S. AND DIST. TINSUKIA
ASSAM
PIN 786125

VERSUS

1:KAJAL CHANDRA PAUL (H)
S/O LATE AMAR CHANDRA PAUL
R/O MILAN PALLY
P.O. AND P.S. TINSUKIA
DIST- TINSUKIA
ASSAM
PIN 786125

Advocate for the Petitioner : MR G P BHOWMIK

Advocate for the Respondent : MR. P J SAIKIA

Linked Case : CRP 71/2018

1:PRADIP KUMAR DAS
S/O- LATE RAJENDRA KUMAR DAS
TILAK MARKET
NOONIA PATTY ROAD
NA-PUKHURI

P.O
P.S AND DIST- TINSUKIA
ASSAM
PIN- 786125

VERSUS

1:KAJAL CHANDRA PAUL
S/O- LATE AMAR CHANDRA PAUL
R/O- MILAN PALLY
P.O AND P.S- TINSUKIA
DIST- TINSUKIA
ASSAM
PIN- 786125

Advocate for the Petitioner : MR G P BHOWMIK
Advocate for the Respondent : MR. P J SAIKIA

Linked Case : CRP 67/2018

1:SANKAR LAL DEB
S/O- SRI DIGENDRA LAL DEB
R/O- MILAN PALLY
TINSUKIA
P.O AND P.S- TINSUKIA
DIST- TINSUKIA
PIN- 786125

VERSUS

1:KAJAL CHANDRA PAUL
S/O- LATE AMAR CHANDRA PAUL
R/O- MILAN PALLY
P.O AND P.S- TINSUKIA
DIST- TINSUKIA
ASSAM
PIN- 786125

Advocate for the Petitioner : MR G P BHOWMIK
Advocate for the Respondent : MR. P J SAIKIA

Linked Case : CRP 110/2018

1:SUDEB GHOSH AND ANR.
S/O. LT. PARESH CHANDRA GHOSH
TILAK MARKET
NOONIA PATTY ROAD
NA-PUKHURI
TINSUKIA TOWN
P.O.
P.S. AND DIST. TINSUKIA
ASSAM-786125.

2: JAYDEV GHOSH

S/O. LT. PARESH CHANDRA GHOSH
TILAK MARKET
NOONIA PATTY ROAD
NA-PUKHURI
TINSUKIA TOWN
P.O.
P.S. AND DIST. TINSUKIA
ASSAM-786125.
VERSUS

1:KAJAL CHANDRA PAUL
S/O. LT. AMAR CHANDRA PAUL
R/O. MILAN PALLY
P.O. AND P.S. TINSUKIA
DIST. TINSUKIA
ASSAM-786125.

Advocate for the Petitioner : MR G P BHOWMIK
Advocate for the Respondent :

Linked Case : CRP 75/2018

1:RAJDEO PRASAD
S/O- LATE SINGHASAN PRASAD
TILAK MARKET
NOONIA PATTY ROAD
NAUPUKHURI

P.O AND P.S- TINSUKIA AND DIST- TINSUKIA
ASSAM
PIN- 786125

VERSUS

1:KAJAL CHANDRA PAUL
S/O- LATE AMAR CHANDRA PAUL
R/O- MILAN PALLY
P.O AND P.S- TINSUKIA
DIST- TINSUKIA
ASSAM
PIN- 786125

Advocate for the Petitioner : MR G P BHOWMIK
Advocate for the Respondent : MR. P J SAIKIA

Linked Case : CRP 82/2018

1:NAVADIP SARKAR ALIAS NAVADIP MANDAL
S/O- LATE HARMOHAN SARKAR
ALIAS HARMOHAN MANDAL
TILAK MARKET
NOONIA PATTY ROAD
NAUPUKHURI
P.O
P.S AND DIST- TINSUKIA
ASSAM
PIN- 786125

VERSUS

1:KAJAL CHANDRA PAUL
S/O- LATE AMAR CHANDRA PAUL
R/O- MILAN PALLY
P.O AND P.S- TINSUKIA
DIST- TINSUKIA
ASSAM
PIN- 786125

Advocate for the Petitioner : MR G P BHOWMIK
Advocate for the Respondent : MR. P J SAIKIA

Linked Case : CRP 117/2018

1:PIYUSH PAUL
SON OF LATE JOGESH PAUL
TILAK MARKET
NOONIA PATTY ROAD
NAUPUKHURI
P.O. AND P.S. AND DIST. TINSUKIA
ASSAM
PIN- 786125.

VERSUS

1:KAJAL CHANDRA PAUL
SON OF LATE AMAR CHANDRA PUAL
RESIDENT OF MILAN PALLY
P.O. AND P.S. TINSUKIA
DISTRICT- TINSUKIA
ASSAM
PIN- 786125.

Advocate for the Petitioner : MR G P BHOWMIK
Advocate for the Respondent :

Linked Case : CRP 114/2018

1:KAJAL RANI RAI ALIAS KAJAL RANI ROY
W/O LT. ANIL BARAN RAI
TILAK MARKET
NOONIA PATTY ROAD

NA-PUKHURI
P.O.
P.S. AND DIST. TINSUKIA
ASSAM
PIN - 786125.

VERSUS

1:KAJAL CHANDRA PAUL
S/O LT. AMAR CHANDRA PAUL
R/O MILAN PALLY

P.O. AND P.S. TINSUKIA
DIST. TINSUKIA
ASSAM

PIN - 786125.

Advocate for the Petitioner : MR G P BHOWMIK
Advocate for the Respondent :

Linked Case : CRP 120/2018

1:AKHTAR KAMAL
S/O- LATE MD. HASIM
TILAK MARKET
NOONIA PATTY ROAD
NAUPUKHURI
P.O AND P.S- TINSUKIA
DIST- TINSUKIA
ASSAM
PIN- 786125

VERSUS

1:KAJAL CHANDRA PAUL
S/O- LATE AMAR CHANDRA PAUL
R/O- MILAN PALLY
P.O AND P.S- TINSUKIA
DIST- TINSUKIA
ASSAM
PIN- 786125

Advocate for the Petitioner : MR G P BHOWMIK
Advocate for the Respondent :

: BEFORE ::

HON'BLE MR. JUSTICE PRASANTA KUMAR DEKA

For the Appellants : Mr. G. P. Bhowmik

For the Respondent : Mr. R. S. Mishra

Date of delivery of

Judgment and Order : **30.11.2018**

:: JUDGMENT & ORDER ::

(ORAL)

Heard Mr. G. P. Bhowmik, the learned Senior Counsel assisted by Ms. P. Chetia, the learned counsel for the petitioner and Mr. R. S. Mishra, the learned counsel for the respondent.

The present petitioners in these revision petitions are tenants under the common landlord who is the sole respondent in all the revision petitions. The tenants-petitioners in these revision petitions filed Misc. (Rent) Case Nos. 175/2018, 174/2018, 177/2018, 179/2018, 176/2018, 172/2018, 173/2018, 180/2018 and 178/2018 to deposit their respective rent for the month of January and February, 2018 under Section 5(4) of the Assam Urban Areas Rent Control Act, 1972 seeking the leave of the Court of learned Munsiff No. 1, Tinsukia in that respect so far the tenanted premises under their respective occupations are concerned. Notices were issued to the landlord respondent who filed written objection in each of the Misc (Rent) Cases that the said landlord had no right to receive the rent inasmuch as, Smti. Sumitra Rani Paul and Sri. Tilak Chandra Paul only authorized the landlord respondent to collect the rent from tenants on their behalf. Further it was informed to the Court that the said Smti. Sumitra Rani Pal and Tilak Chandra Paul the owners, had sold the land to Smti. Uma Karmakar and their husband Govinda Karmakar both resident of Tinsukia Railway Colony in the district of Tinsukia vide Registered Sale Deed bearing No. 273/2017. The learned Court as the Rent Controller

under the Assam Urban Areas Rent Control Act, 1972 observed that the ownership of the said tenanted premises were transferred to Smti. Uma Karmakar and Govinda Karmakar by way of Registered Sale Deed w.e.f. 01.06.2017 and finally held as follows:-

“It is directed to the petitioner to attorn his tenancy with the true owner or land lord and to pay the rent to them. It is further directed to the petitioner not to deposit the rent in favour of opposite party Kajal Chandra Paul.

Considering the same this application under Section 5(4) of the Assam Urban Areas Rent Control Act, 1972 is dismissed.”

Being aggrieved the tenants are before this Court by filing individual revision petition. Mr. Bhowmik, the learned Senior Counsel submits that the law is settled inasmuch as, the proceeding before the Rent Controller under the Assam Urban Areas Rent Control Act is not a judicial one and as such, no judicial order can be passed by a Rent Controller. In support of the said submission Mr. Bhowmik relies ***Samiran Paul Vs. Anubha Banik and Ors*** reported in ***2007 (4) GLT 482***.

On the other hand Mr. Mishra submits that the order impugned cannot be termed to be a judicial one and as such, he opposed the submission of Mr. Bhowmik, the learned Senior Counsel for the petitioners.

Considered the submissions of the learned counsel. In ***Samiran Paul Vs. Anubha Banik and Ors*** reported in ***2007 (4) GLT 482***, this Court held as follows:-

“(11) Sub-section 4 of Section 5 of the Act provides for depositing the rent by the tenant in Court subject to fulfillment of conditions namely, there must be refusal by the landlord to accept the lawful rent on being offered by the tenant, such deposit must be within a fortnight of its becoming due and together with the process fee for service of notice upon the landlord. From the language of sub-section 4 of Section 5 of the said Act, it is evident that the Court in which such deposit made is not required to decide any question and also not required to decide any dispute between the landlord and the tenant. The dispute whether the tenant is a defaulter within the meaning of the Act, and as such is evictable can only be decided in a suit instituted in the Civil Court within the meaning of the Act. Though the ‘court’ means the Court of the ordinary civil jurisdiction competent to pass a decree for ejectment of tenant, in the application filed under sub-section 4 of Section 5 of the Code, it is not deciding any dispute between the landlord and tenant and is not adjudicating any lis. Hence, the application filed under sub-section 4 of Section 5 cannot be treated as a ‘proceeding’

within the meaning of Section 141 of the Code to apply the provisions of the Code to such application. Viewed from another angle, if the provisions of the Code is applied even to an application filed under sub-section 4 of Section 5 of the Act depositing the rent in Court, such Court, as soon as such application is filed has to issue notice before marking such deposit of rent, to the landlord to file objection, then frame the issue, then take evidence and decide whether the deposit is valid or not within the meaning of sub-section 4 of Section 5 of the Act. As discussed above, the said provision does not confer any power of the Court to decide such question and Court is simply to take deposit leaving the question relating to the legality and validity of such deposit to be decided in the suit instituted either by the landlord or by the tenants. If the provisions of the Code are applied, it will defeat the purposes for which sub-section 4 of Section 5 has been enacted, as by applying the provisions of the Code a shrewd landlord may delay deposit of the rent by the tenant, thereby making him defaulter within the meaning of the Act."

In the said decision it was held that a proceeding under section 5 (4) of the Assam Rent Control Act, 1972 cannot be equated with the "proceeding" defined under section 141 of Code of Civil Procedure 1908. The Court is simply to allow deposit of the rent without examining the validity and legality of such deposit.

On perusal of the impugned order/orders it is clear and apparent that the Rent Controller court below exceeded its jurisdiction inasmuch as, a specific direction has been issued to the tenants-petitioners to attorn the true owner or landlord and to pay rent to them and further directed the petitioners not to deposit the rent in favour of the respondent Kajal Chandra Paul, the landlord. Consequently in my considered opinion the impugned orders are liable to be set aside and the Rent Controller/Court below shall confine its jurisdiction as observed above and allow the petitioner/petitioners to deposit the rent as per their own volition. The impugned orders passed by the learned court of Munsiff No.1, Tinsukia are set aside with a direction to pass necessary order in terms of the observation made hereinabove.

These revision petitions are allowed.

JUDGE

Comparing Assistant