

(2006) 07 GAU CK 0005

Gauhati High Court

Case No: CRP No. 469 of 2003

Nandlal Karnani

APPELLANT

Vs

Harendra Kumar Bordoloi

RESPONDENT

Date of Decision: July 18, 2006

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 115

Citation: (2007) 1 GLR 217 : (2006) 3 GLT 421

Hon'ble Judges: D. Biswas, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

D. Biswas, J.

This revision is directed against the Judgment and Decree dated 30.9.2003 passed by the learned Civil Judge (Senior Division), Sibsagar in Title Appeal No. 8 of 2001 reversing the Judgment and Decree dated 11.4.2001 passed by the learned Civil Judge (Junior Division), Sibsagar in Title Suit No. 76 of 1986.

2. The respondent as plaintiff instituted Title Suit No.76 of 1986 against the predecessor-in-interest of the petitioners for recovery of possession of the suit premises by evicting the petitioner-tenants. The lease was for a period of eleven months expiring on 30th September, 1986. The monthly rent was fixed at Rs. 600. After expiry of the aforesaid period, in spite of repeated demand, the revision petitioners did not vacate the suit premises. Consequent thereupon, the ejectment suit was filed on the ground that the suit premises is bona fide required by the plaintiff for construction.

3. The revision petitioners in their written statement denied the title of the respondent, inter alia, asserting that the revision petitioners without any objection from any quarter raised permanent construction on the land in question and as such, they are non-evictable tenants under the provisions of the Assam Urban Areas

(Non-Agricultural) Tenancy Act. It was also pleaded that the suit has been filed on refusal of the proposal for enhancement of rent.

4. The learned Civil Judge (Junior Division) dismissed the suit on conclusion of trial. The learned First Appellate Court reversed the judgment and decreed the suit on the ground that the revision petitioners are tenants from month to month on condition of payment of rent at the rate of Rs. 600 per month and the agreed period of eleven months expired on 30th September, 1986. It was also held that the suit premises is bona fide required by the landlord for the purpose of construction for commercial use to augment income.

5. Ext. 3 clearly shows that there is a relationship of landlord and tenant and the lease was for a period of 11 months with effect from 18th November, 1985 on condition of payment of rent at the rate of Rs. 600 per month according to English Calendar month. Therefore, there is no doubt that the petitioners are tenants and their case is covered by the provisions of the Assam Urban Areas Rent Control Act and not under the provisions of the Assam Urban Areas (Non-Agricultural) Tenancy Act, as pleaded by the tenants. The lease deed also indicates that the lease was for occupation of the premises on acknowledgement of the right and title of the landlord. It was leased out for the purpose of running a business of retail outlet of sawn timbers. Therefore, the revision petitioners' claim that they are protected under the provisions of the Assam Urban Areas (Non-Agricultural) Tenancy Act is nothing short of a foul cry.

6. Mr. B.K. Goswami, learned senior Counsel argued that there is no pleading in the instant case for bona fide requirement and the respondent also failed to prove that they require the house for bona fide requirement. The learned Counsel relied upon the decisions in [M.M. Quasim Vs. Manohar Lal Sharma and others](#), ; [Hasmat Rai and Another Vs. Raghunath Prasad](#), ; [Ramesh Vs. A. Balreddy](#), and [Deena Nath Vs. Pooran Lal](#), in support of his contention.

7. The grounds raised by the learned Counsel have been addressed by the learned First Appellate Court in details. The plea that there is no pleading of bona fide requirement is not correct. Infact, this is the foundation of the case. The learned First Appellate Court dealt with the question of augmentation of income and the question of protection u/s 5(c) of the Assam Urban Areas Rent Control Act. The learned Judge has also discussed about the availability of other vacant plot of land belonging to the respondent and in exercise of his jurisdiction has come to the conclusion that the house is bona fide required by the landlord for construction of commercial purpose. I do not find any error of jurisdiction in the matter or any perversity in the judgment. The revision petitioners being actuated by unlawful greed made a false assertion in the written statement that they have constructed permanent construction on the suit land and is protected under the provisions of the Assam Urban Areas (Non-Agricultural) Tenancy Act. In [R.V.E. Venkatachala Gounder Vs. Venkatesha Gupta and Others](#), , the hon"ble Supreme Court held as

follows:

11. We may refer to two decisions of the Madras High Court. In *S. Raju v. K. Nathamani*, the Constitution Bench decision has been followed and it has been held that when new buildings with modern amenities have come up in that locality, naturally the building in question may become unsuitable to the surroundings and a liability, in its present condition, to the landlord. Keeping the building in the same condition will amount to asking the landlord to shoulder the burden forever. Tenants may be satisfied with the present state of the building since they have to pay only a nominal rent but the rent control legislation, beneficial to the landlord and the tenant both, should be interpreted in that way. For the purpose of proving his bona fides the landlord need only show that he has got the capacity to raise the necessary funds.

8. The ratio available in the above case aptly applies in the instant case also. The suit premises consist of a vacant plot of land and a shed with tin roof. The landlord now wants to construct a building thereon for commercial purpose. The attempt of the landlord to develop the land by constructing building for commercial purpose cannot be resisted if the intention so expressed is bona fide. The decision in *Hasmat Rai* (supra) cannot be applied as a straight jacket formulae in the instant case since the factual matrix of that case is different. In *Hasmat Rai* (supra), the suit was for possession of a building let out for nonresidential purpose for the purpose of starting his own business by the landlord. In that context, the hon'ble Supreme Court held that the landlord has to establish that he has no other reasonably suitable nonresidential accommodation of his own in his occupation in the city. There is no doubt that the landlord has no unfettered right to choose the premises. In a case where the landlord has other vacant premises, that by itself cannot be sufficient to negative the landlord's claim. In such a situation, the court would expect the landlord to establish that the premises which is vacant is not suitable for the purpose of his occupation or for the purpose for which he requires the premises. It is true that the requirement by the landlord should not be a mere whim or a fanciful desire. The requirement must be bona fide. In the instant case, the tenants did not adduce any evidence to substantiate his claim that the landlord has filed the suit to evict him for getting more rent from another. There is no evidence on record to show that the landlord has other vacant plots of land. The evidence of *DWI Badrilal Karnani*, the father of the revision petitioner Nos. 1 and 2, is completely silent about other lands. The evidence led in this behalf is cryptic and there is no description of any vacant land in the vicinity where the building is sought to be constructed for commercial purpose. It would appear from Ext. 24 that the landlord also obtained permission from Sibsagar Development Authority for construction of a building on the disputed land for commercial purpose. In the instant case, it cannot be said that the requirement of the suit premises by the landlord is not bona fide. That apart, the provisions in Section 5(3) of the Assam Urban Areas Rent Control Act also provide that a tenant evicted from the tenement is entitled to

recover possession in case the landlord indulges in using the suit premises for any purpose other than for which the decree of eviction was granted.

9. The powers of this Court u/s 115 of the CPC is limited. The revision petition deserves to be dismissed as there is no jurisdictional error as well as perversity in the judgment of the learned First Appellate Court.

10. In the result, the revision petition is dismissed. The interim order of stay of the execution of the judgment and decree dated 30.9.2003 passed by the learned Civil Judge (Senior Division), Sibsagar in Title Appeal No. 8 of 2001 passed on 12.12.2003 is vacated.