
(1996) 07 GAU CK 0015

Gauhati High Court (Agartala Bench)

Case No: Civil Rule No. 140 of 1995

Dipali Dhar

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision: July 17, 1996

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 141
- Constitution of India, 1950 - Article 14, 226

Citation: (1997) 1 GLR 125

Hon'ble Judges: N.G. Das, J

Bench: Single Bench

Advocate: P. Dutta, for the Appellant; S. Deb, R. Dasgupta and U.B. Saha, for the Respondent

Judgement

N.G. Das, J.

The facts giving rise to the filing of this petition under Article 226 of the Constitution of India are that the Petitioner let-out her building situate on a plot appertaining to C.S. Plot Nos. 8840/24882 and 8440/24881 at Kunjaban to the Respondent No. 2 viz. Secretary, Tripura Board of Secondary Education on the condition that the rent of the said building would be fixed as per approved standard rate of the State Government and the said rent would be increased from time to time as per re-assessment of house rent by the Respondent No. 3, Executive Engineer, Agartala Division No. 1. As per these terms and conditions the Respondent No. 2 took occupation of the building with effect from 15.9.1976 and also paid the rent as per the assessment made by the Respondent No. 3 for a period of 5 (five) years starting from 15.9.1976 to 15.9.1981.

2. After expiry of this period the Respondent No. 2 wrote a letter to the Respondent No. 3 on 28.8.1982 (Annexure-2) for re-assessment of the fair rent. On receipt of that letter Respondent No. 3 reassessed the rent at the rate of Rs. 1927/- per mensem for

the period starting from 15.9.1981 to 23.9.1982 and at the rate of Rs. 2417/- per mensem starting from 24.9.1982 onwards (Annexure-3). As per this assessment the Petitioner also got the rent from Respondent No. 2 upto 15.9.1986. Thereafter the Respondent No. 2 again wrote a letter on 18.8.1988 to the Respondent No. 3 for re-assessment of the house rent of the building from 16.9.1986 (Annexure-4 series). The Respondent No. 3, on receipt of this communication, re-assessed the standard rent of the building at the rate of Rs. 3124/- per mensem for the period starting from 16.9.1986 to 5.7.1988 and at the rate of Rs. 3820/- per mensem for the period starting from 6.7.1988 to 15.9.1991 for the first phase and at the rate of Rs. 7795/- per mensem for the period starting from 16.9.1991 to 6.1.1992 and at the rate of Rs. 8744/- per mensem with effect from 7.1.1992 onwards for the second phase for a maximum period of 5 (five) years (Annexure-5).

3. Thereafter Respondent No. 2 also issued a letter to the District Magistrate & Collector, West Tripura, Agartala for assessment of the valuation of the land of the Petitioner. The District Magistrate & Collector then asked the Petitioner to deposit Rs. 533/- and Rs. 1953/- by treasury challan to enable him to issue Land Valuation Certificate. Accordingly the Petitioner also deposited the said amount by treasury challans on 24.8.1992.

4. But it was alleged that though Respondent No. 3 re-assessed the rent of the building of the Petitioner from 16.9.1986 at a higher rate (Annexure-5), the Respondent No. 2 paid the rent of the Petitioner at the rate of Rs. 2417/- per mensem for the period starting from 16.9.1986 to 31.12.1993 only. According to the Petitioner, as per re-assessed rate the Petitioner was entitled to get the rent as per her bill submitted under Annexure-7 series. It is stated that as per the bill under Annexure-7 series the Petitioner was entitled to get a further sum of Rs. 1,86,844.91 paise but the Respondent No. 2 did not pay this amount inspite of repeated approaches. So, the Petitioner submitted a notice by registered post through her advocate for payment of the aforesaid sum together with compensation at the rate of Rs. 12% but the Respondent No. 2 did not clear up the dues. It is stated that the Petitioner is also entitled to get the fees which she deposited for assessment of the valuation of her land.

5. The further case of the Petitioner is that she sold her land to the Tripura Small Industries Corporation by a registered sale deed dated 11.2.1993 and before execution of the sale deed she duly informed the Respondent No. 2 to vacate the rented premises by 28.2.1993 (Annexure-9 series). But the Respondent No. 2 did not clear up the dues as per her bill (Annexure-7 series).

6. The Respondent No. 2 resisted the writ petition by filing a counter affidavit wherein it has been contended, inter alia, that the writ petition is a speculative one as the Petitioner has alternative efficacious remedy under the civil law and hence there is no scope for this Court to exercise its extra-ordinary jurisdiction under Article 226 of the Constitution of India. It has been contended that since there has

been no contravention of any provision of the Constitution or any provision of any enactment, the Petitioner is not entitled to seek redress under Article 226 of the Constitution of India. It has, however, been admitted that the Respondent No. 2 took lease of the building of the Petitioner and he also paid the rent for the first 5 (five) years starting from 15.9.1976 as per the assessment made by the Respondent No. 3. But it has been contended further that the statement of reassessed rent with effect from 16.9.86 was received by the Respondent No. 2 after vacating the building of the Petitioner with effect from 17.1.1993. It is stated that the Respondent No. 2 cleared up the rent upto 17.1.1993 at the rate of Rs. 2417/- per mensem. It is stated further that the Board wrote to Respondent No. 3 to re-assess the rent of the building of the Petitioner but the statement of re-assessment of rent was issued only on 10.9.1993 when the Board already vacated the building of the Petitioner after clearing up all the dues upto that date at the rate of previous assessed rent i.e. at the rate of Rs. 2417/- per mensem. But it has been contended that the disputes which have now arisen on account of the statement of re-assessment can only be decided by a civil court as the disputes which have now arisen are subject to proof by evidence and records.

7. It has been further contended that the statement of re-assessment of rent would show that it was not in conformity with the previous assessment and hence such dispute can only be decided by the civil court on taking evidence of the parties.

8. From the pleadings of the parties as discussed above, the undisputed fact that emerges out is that the Respondent No. 2 took lease of the building of the Petitioner with effect from 15.9.79 on the condition of paying the rent at the approved standard rate of the State Government and that rent would be increased from time to time as per the re-assessment statement of house rent to be submitted by the Respondent No. 3. It has also been admitted by the answering Respondent that he paid rent at the rate of Rs. 1347/- per mensem for a period of 5 (five) years with effect from 15.9.1976 A.D. and for the rest period i.e. upto 17.1.1993 A.D. when the Respondent No. 2 vacated the building, the rent was paid at the rate of Rs. 2417/- per mensem. It has also not been denied that the Respondent No. 2 was bound to pay the rent to be assessed by the Respondent No. 3 as this fact would be evident from the letters marked as Annexure-4 series addressed to Respondent No. 3, viz, the Executive Engineer, Agartala Division No. 1, Public Works Department, Government of Tripura, Agartala by the Respondent No. 2, namely, Secretary, Tripura Board of Secondary Education.

9. But even though all these facts have been admitted, Mr. S. Deb, the learned senior counsel appearing on behalf of the Respondent No. 2 has contended that the subject matter of the writ petition arises out of a contract and hence any breach of such contract can be adjudicated satisfactorily by taking detailed evidence, involving examination and cross-examination of witnesses to be produced by the parties. He has, therefore, contended that in such case where facts are disputed the civil court

of competent jurisdiction is the proper forum where such disputed question of facts can be satisfactorily adjudicated after taking evidence. In support of his contention Mr. Deb has also placed reliance upon a decision of the Supreme Court rendered in the case of [Radhakrishna Agarwal and Others Vs. State of Bihar and Others](#), The facts of the cases decided by the aforesaid decision appear to be distinguishable from the present one as there under para 11 of the judgment their Lordships observed that in those cases contracts did not contain any statutory terms or obligations and no statutory power or obligation which could attract the application of Article 14 of the Constitution was involved. It was also observed that even in cases where question is of choice or consideration of competing claims before an entry into the field of contract facts have to be investigated and found before the question of a violation of Article 14 could arise. If those facts are disputed and require assessment of evidence the correctness of which can only be tested satisfactorily by taking detailed evidence, involving examination and cross-examination of witnesses, the case could not be conveniently or satisfactorily decided in proceedings under Article 226 of the Constitution.

10. But in the present case as stated above, it is an admitted fact that the Respondent No. 2 took lease of the building of the Petitioner with a stipulation that he would pay the rent as would be fixed by the Respondent No. 3 namely, the Executive Engineer, Agartala Division No. 1, Public Works Department, Government of Tripura, Agartala. The letter of Secretary, Tripura Board of Secondary Education dated 10th of August, 1977 (Annexure-I) addressed to the Superintending Engineer, IInd Circle, Agartala shows that the Secretary by that letter requested the Superintending Engineer for assessment of the rent with effect from 15.9.76. The letter dated 28th of August, 1982 (Annexure-2) further shows that the Secretary, Tripura Board of Secondary Education by his aforesaid letter again requested the Executive Engineer, Agartala Division No. 1, Public Works Department, Government of Tripura for re-assessment of the rent of the building as the period of 5 (five) years starting from 15.9.76 expired. The letter of Executive Engineer dated 23.11.84 contained in Annexure-3 shows that the Executive Engineer re-assessed the rent at the rate of Rs. 1927/- per mensem for the period starting from 15.9.81 to 23.9.82 and at the rate of Rs. 2417/- per mensem from 24.9.82 onwards.

11. The letter dated 18.8.1988 (Annexure-4 series) further shows that the Secretary, Tripura Board of Secondary Education by his this letter requested the Executive Engineer, Agartala Division No. 3, Public Works Department, Government of Tripura, Agartala for re-assessment of the rent for the period starting from 16.9.86 as the period of 5 (five) years for which he fixed the standard rent expired on 15.9.86.

12. Office Order No. 365 dated, Agartala the 10th September, 1993 further shows that the Executive Engineer re-assessed the standard rent with effect from 16.9.86. It would be advantageous to quote the aforesaid Office Order which reads as follows:

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7377-80

Government of Tripura

Office of the Executive Engineer

Agartala Division No. I

Agartala

Office Order No. 365 Dated, Agartala the 10.9.93

The standard rent of the building owned by Smti. Dipali Dhar, Agartala under occupation of Tripura Board of Secondary Education have been re-assessed for Rs. 3,124.00 (Rupees three thousand one hundred twenty four) only per month with effect from 16.9.86 to 5.7.88 and Rs. 3,820.00 (Rupees three thousand eight hundred twenty) only per month with effect from 6.7.88 to 15.9.91 for 1st phase and Rs. 7,795.00 (Rupees seven thousand seven hundred ninety five) only per month with effect from 16.9.91 to 6.1.92 and Rs. 8,744.00 (Rupees eight thousand seven hundred forty four) only per month with effect from 7.1.92 onwards for 2nd phase for a maximum period of 5 (five) years.

The above assessed rates of rent include yearly maintenance cost of building but exclude Municipal Taxes.

Executive Engineer,

Agartala Division No. I

Agartala.

Memo No. F. ASST/EE-I/169/7377-80

Dated, the 10.9.93

Copy to:

1. Office Order Book
2. The Superintending Engineer, 2nd Circle, Agartala for favour of information with ref. to his letter No. F. 13(4)/SE-H/114/1057 dated 24.2.92
3. The Secretary, Tripura Board of Secondary Education, Agartala.
4. Concerned file for office copy.

Sd/- Illegible

Executive Engineer

Agartala Division No. I

Agartala.

13. This Office Order clearly indicates that the rent was re-assessed at the rate pf Rs. 3,124/- per mensem for the period starting from 16.9.86 to 5.7.88 and at the rate of Rs. 3,820/- per mensem for the period starting from 6.7.88 to 15.9.91 for the 1st

phase and at the rate of Rs. 7,795/- per mensem for the period starting from 16.9.91 to 6.1.92 and at the rate of Rs. 8,744/- per mensem with effect from 7.1.92 onwards for the 2nd phase for a maximum period of 5 (five) years.

14. In view of all these admitted facts I see no reason why the High Court should not exercise its extra-ordinary jurisdiction under Article 226 of the Constitution which aims at securing a very speedy and efficacious remedy to a person, whose legal or Constitutional right has been infringed. I am of opinion that if technical rules laid down in CPC are to be applied to writ proceedings the very object and purpose is likely to be defeated. Therefore, parliament by the amending Act (1976) introduced the explanation saying that in Section 141, Code of Civil Procedure. the expression "proceedings" does not include any proceeding under Article 226 of the Constitution.

15. It has been admitted by the Respondent No. 2 in his counter affidavit that he paid the rent at the rate of Rs. 2417/- per mensem which was assessed by the Public Works Department. Office Order No. 533 dated 23.11.84 contained in Annexure-3 shows that monthly rent of the building was fixed at the rate of Rs. 1927/- per mensem for the period starting from 15.9.81 to 23.9.82 and rent was fixed at the rate of Rs. 2417/- per mensem for the period starting from 24.9.82 onwards. It was further mentioned that rent so assessed shall hold good for a period of 5 (five) years starting from 15.9.81 i.e. upto 15.9.86. Annexure-5 Office Order i as quoted above will further show that rent was separately assessed for different periods at different rates for the periods starting from 16.9.86. The Petitioner is therefore, entitled to get rent as assessed by the Executive Engineer by his Office Order No. 365 dated 10.9.93 (Annexure-5) and not at the rate of Rs. 2417/- per mensem as paid by the Respondent No. 2.

16. In view of the above facts I find that the Petitioner is entitled to get the rent for her building at the rates assessed by the Executive Engineer by his Office Order No. 365 dated 10.9.93 (Annexure-5). The Respondent No. 2, namely, the Secretary, Tripura Board of Secondary Education is, therefore, directed to calculate the rent, of the building of the Petitioner on the basis of the assessment of rent made by the Executive Engineer, Agartala Division No. 1, Public Works Department, Government of Tripura, Agartala in his Office Order No. 365 dated 10.9.93 (Annexure-5) and pay the sum to the Petitioner within a period of 2 (two) months after deducting the amount which has already been paid for that period with interest at the rate of Rs. 12% per annum from the date of presentation of this writ petition.