

Serial No. 03
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

CRP No. 3 of 2023

Date of Decision: 06.04.2023

Shri. Amit Kumar Shah

Vs.

Shri. Parvez Sharif

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. S. Jindal, Adv.

For the Respondent(s) : Mr. S. Sen, Adv.

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

Oral:

1. The case of the petitioner is that, he is a tenant of the respondent who had instituted a suit for eviction, being Ejectment Suit No. 25(H) of 2022, before the Court of the Assistant District Judge,

Shillong against him, and that even before his appearance in the case, the electricity to the suit premises was disconnected. A Misc. Case was then filed by the petitioner under Section 6 and 7 of the Meghalaya Urban Areas Rent Control Act, read with Section 94 and 151 of the CPC, for restoration of the electricity connection, before the Court of the Assistant District Judge, Shillong, which by order dated 22.02.2023, while issuing notice, also ordered that, in the interim the connection be restored pending the disposal of the said Misc. Case.

2. The respondent being aggrieved, then preferred an appeal against the order dated 22.02.2023, under Section 8 of the Meghalaya Urban Areas Rent Control Act, before the Court of the District Judge, Shillong, and the same was registered as FAO No. 1(H) of 2023. The Learned District Judge, thereafter, disposed of the appeal vide order dated 06.03.2023, and set aside the order dated 22.02.2023, however, without hearing the petitioner. The petitioner being highly aggrieved thereby, has presented this petition under Article 227 for quashing and setting aside the order dated 06.03.2023.

3. Mr. S. Jindal, learned counsel on behalf of the petitioner submits that, the impugned order is without jurisdiction, firstly as the appeal was not maintainable as the order dated 22.02.2023, was not appealable under Section 8, as it was an order granted under Section 7(1)

of the Meghalaya Urban Areas Rent Control Act, read with Section 94 of the CPC. Secondly, he submits that, the order dated 22.02.2023, was an interim order and not a final adjudication of the matter, and the Lower Appellate Court, should have allowed the Court of the Assistant District Judge, to finally adjudicate the matter, and then entertain an appeal under Section 8 of the Meghalaya Urban Areas Rent Control Act. He lastly submits that, what compounds the illegality is that, the impugned order was passed without any issuance of notice, or affording any opportunity of hearing to the petitioner.

4. Mr. S. Sen, learned counsel for the respondent submits that, the appeal was occasioned in view of the patent illegality of the order dated 22.02.2023, passed by the Assistant District Judge in the Misc. Case, inasmuch as, apart from not following the procedure under Section 7 of the Meghalaya Urban Areas Rent Control Act, the same was also entertained under Section 94 and 151 of the CPC. Learned counsel submits that, Section 7(1) of the Meghalaya Urban Areas Rent Control Act, mandates that notice on the application of the tenant seeking maintenance of essential supplies is to be issued to the landlord, who is to show cause to the same, only after which, effective orders can be passed. The same not having been complied with, and the restoration of electricity allowed by the Assistant District Judge, by order dated

22.02.2023, the learned counsel submits that, the impugned order only corrected this position, by directing that due procedure be followed, and an opportunity to show cause against the application of the petitioner be given to the respondent.

5. On another limb of submission, the learned counsel has submitted that, Section 6 of the Meghalaya Urban Areas Rent Control Act, only speaks of maintenance of existing essential supplies such as supply of electricity etc., which he contends will not be attracted in the present case, inasmuch as, the suit premises has been without an electrical connection since 2020, and as such, is not an existing service. He therefore submits that, the application of the petitioner before the Assistant District Judge, itself is incompetent. It has also been further submitted that, the petitioner has approached this Court, on his failure to obtain a favourable order as to reconnection, after the last hearing which was held on 24.03.2023, whereby the Trial Court had directed for production of documents to establish the actual date, as to when the electricity was disconnected. A copy of the order dated 24.03.2023, has also been produced before this Court.

6. Having heard learned counsels for the parties and on perusal of the impugned order dated 06.03.2023, as well as the order dated 22.02.2023, it appears that the basic grievance of both the parties herein,

is the deprivation of the right to be heard, firstly by the respondent, when the order for reconnection of electricity was passed by the Learned Assistant District Judge, and by the petitioner when the said order was set aside by the Learned District Judge on appeal.

7. This Court therefore, as the matter has come by way of an application under Article 227, is to examine whether the powers under supervisory jurisdiction are to be exercised in the facts and circumstances of the case. In this respect, it would be worthwhile and necessary to refer to the order dated 22.02.2023, passed by the Assistant District Judge, whereby the electricity connection was directed to be restored till the disposal of the said Misc. Case. The order though interim in nature, had directed for restoration of electricity, which as per Section 7(2) of the Meghalaya Urban Areas Rent Control Act, which could have been passed only after notice to the landlord to appear and show cause against the application of the tenant. Section 7(1) and (2) which is relevant, is quoted hereinbelow.

***“Notice on landlord
to perform duties***

***7. (1) If the landlord neglects to make
such repairs or to maintain such
existing essential supplies and
services as he is bound to do under
the provisions of section 6, the***

Court may, on the application of the tenant, direct the landlord by notice to appear before is and to show cause against the application of the tenant.

(2) If the landlord fails to show sufficient cause, the court, the Court may direct him to make such repairs or as the case may be, to take such measures for the restoration of the essential supplies and services as contemplated in section 6 within a period fixed by the Court.”

8. The grievance therefore of the respondent is founded upon sufficient reason, as he was not heard nor allowed to show cause before the order of restoration of electricity was passed. Though the order dated 22.02.2023, is not under direct challenge, it is however, central to the proceedings which are now before this Court and as such, deserves consideration.

9. Coming to the impugned order dated 06.03.2023, it is also noted that, the appeal was disposed of without affording any opportunity to the petitioner, which in effect has also deprived him of an opportunity to defend his case. Though, technical objections as to its maintainability

have also been raised by the petitioner, looking into the totality of the facts and circumstances of the case, as observed earlier, the baseline is that, both the orders in question were passed after hearing only one side. Further, this Court also cannot ignore the fact that, the matter is still under contest before the Court of the Assistant District Judge, as evidenced by the order dated 24.03.2023.

10. This Court in exercise of powers under Article 227 of the Constitution, is not sitting as an Appellate Court over the orders of the Court below, but in exercise of supervisory jurisdiction is to see as to whether the proceedings are within the set parameters. Judicial intervention under Article 227 of the Constitution, is to be exercised not to correct errors of law or fact, but to ensure that, the Courts below are within the bounds of their jurisdiction and is to be exercised sparingly. In the instant case, as can be seen from the discussions above, the invocation of Article 227 of the Constitution, is warranted only to the extent to ensure that fair procedure in accordance with law is maintained by the Courts below, which was denied to the petitioner, as well as to the respondent in the entire proceedings, commencing from the order dated 22.02.2023, to the impugned order dated 06.03.2023.

11. In these circumstances therefore, to correct the course of the proceedings, the impugned order dated 06.03.2023, is set aside and the

parties relegated to resume the proceedings before the Court of the Assistant District Judge, in Misc. C/ No. 1(H) 2023/T.S C/No. 25(H) 2022. It is further directed that, the Court of the Assistant District Judge, notwithstanding the setting aside of the impugned order, is to recommence the proceedings from the order dated 24.03.2023, in accordance with law, especially keeping in mind the provisions of the Meghalaya Urban Areas Rent Control Act, before any further orders are passed as to the restoration of electricity in the suit premises.

12. As ordered above, this Revision Petition is accordingly disposed of.

13. No order as to costs.



Judge

Meghalaya
06.04.2023
"D.Thabah-PS"