



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

Case No. : WP(C) 40/2023

1:Rebom Nguso
S/o Late Tare Nguso,
Resident of C Sector Naharlagun, PO/PS Naharlagun, District Papumpare, Arunachal Pradesh.
Phone No. 7629933330

VERSUS

1:THE STATE OF AP and 7 Ors.
Represented by the Chief Secretary, Govt. of Arunachal Pradesh, Itanagar.

2:The Chief Secretary
Govt. of Arunachal Pradesh
Itanagar.

3:The Secretary
Govt. of Arunachal Pradesh
Itanagar.

4:The Director
Department of Town Planning
Govt. of Arunachal Pradesh
Itanagar.

5:The Deputy Commissioner
Capital Complex Itanagar
District Papumpare
Arunachal Pradesh
Itanagar.

6:The Additional Deputy Commissioner
Capital Complex Itanagar
District Papumpare
Arunachal Pradesh
Itanagar.

7:The Extra Assistant Commissioner
Naharlagun
District Papumpare
Arunachal Pradesh
Naharlagun.

8:Nyai Ragi
S/o Shri Tanya Ragi
Proprietorship of M/s Brothers Enterprise (Authorized dealer of Hero Moto Corp. Ltd
C Sector Naharlagun
District Papumpare
Arunachal Pradesh

Advocate for the Petitioner : Kemo Lollen

Advocate for the Respondent : GA (AP)

BEFORE
HONBLE MR. JUSTICE ROBIN PHUKAN
JUDGMENT

Date : 07-06-2023

Heard Mr. K. Lollen, learned counsel for the petitioner. Also heard Mr. S. Tapin, learned Sr. Govt. Advocate, Arunachal Pradesh appearing for the State/respondent Nos.1—7. None appears for the respondent No.8, though service by *dasti* mode could not be affected on him, as he refused to accept the notice. However A/D card, in respect of service of notice upon him returned with a report that he has received the notice and therefore, it is proposed to proceed against him ex-parte.

2. In this petition under Article 226 of the Constitution of India, the petitioner, Sri Rebom Nguso, has put to challenge the correctness or otherwise of the order No.NLG/EAC/land-02/2022/38, dated 02.12.2022, passed by the Extra Assistant Commissioner (EAC), Naharlagun. It is to be noted here that vide the impugned order, dated 02.12.2022, the learned EAC, Naharlagun has allowed the respondent No.8 to run the business in the building

premises of the petitioner till 31.08.2023.

3. The factual background leading to filing of the present petition is briefly stated as under:-

“The petitioner herein has leased out a room in the ground floor of his building situated at Sector-C, Naharlagun to the respondent No.8 for running the authorized dealership of Hero Moto Corp. Ltd., in the name and style of M/s. Brothers Enterprise, by entering into an agreement dated 21.08.2006, for a period of ten (10) years, with monthly rental @ Rs.12,000/-. Thereafter, on mutual agreement, the rental amount was enhanced to Rs.20,000/- per month. After expiry of 10 years of lease period, the respondent No.8 did not turn up for renewal of the lease agreement. Then the petitioner served one notice to the respondent No.8, vide his notice dated 10.03.2022, asking him to vacate the premises on or before 30.04.2022. But, the respondent No.8 did not respond to the said notice. In the meantime, the petitioner has undertaken renovation work by engaging huge numbers of labourers at his building and in doing so, the electricity supply of the entire building got disconnected by the labourers, due to breakdown of old walls. Being aggrieved, the respondent No.8 filed a complaint before the Deputy Commissioner, Capital Complex, Itanagar on 09.11.2022, which was accordingly endorsed to the EAC, Naharlagun vide order No.DC-ICC-17012/47/2022/384, dated 11.11.2022 and thereafter, the EAC, Naharlagun passed the aforesaid impugned order and allowed the respondent No.8 to run the business in the said building till 31.08.2023 and further directed the petitioner to connect the electricity supply with immediate effect.”

4. Thereafter, the petitioner under the *bona fide* impression that the impugned order, dated 02.12.2022, was passed by the EAC, Naharlagun in his capacity as Controller, as per

the Arunachal Pradesh Building (Lease, Rent and Eviction) Control Act, 2014, preferred an appeal under Section 37 of the said Act, before the appellate authority i.e. the Addl. Deputy Commissioner, Itanagar on 14.12.2022, challenging the impugned order. And thereafter, he came to know that the State Government has neither appointed any 'Controller' nor 'Appellate Authority', despite enactment of the said Act in the year 2014.

5. Thereafter, the Government of Arunachal Pradesh has enacted the Arunachal Pradesh Tenancy Act, 2022, which was notified in the Official Gazette on 14.11.2022, and under Section 30 of the said Act, the State Government is to appoint a person, not below the rank of Executive Magistrate or Sub-Divisional Officer of the Town/City by notification, to be the 'Rent Authority' for adjudication of all disputes relating to rent, tenancy, etc. And Section 47(I) of the said Act, the earlier Act of 2014 was repealed and as such the impugned order dated 02.12.2022, was passed by the EAC, Naharlagun, neither in the capacity of 'Controller' under the Act of 2014, nor as a 'Rent Authority' under the new Act of 2022. And as such the impugned order, so passed, was without any authority of law and as such the same is null and void and liable to be quashed and set aside, and therefore, it is contended to allow this petition.

6. The respondent Nos.3 & 4 have filed their affidavit-in-opposition, denying the averments made in the petition. It is, however, admitted that under the Arunachal Pradesh Building (Lease, Rent and Eviction) Control Act, 2014, the State Government has to appoint the 'Controller' and the 'Appellate Authority', as per provisions under Section 32 and 34 respectively, of the said Act and in that connection, draft notification in that regard was sent to the Department of Law and Justice, Government of Arunachal Pradesh for vetting of the notification. It is also stated that while the aforesaid process was going on, the Government of Arunachal Pradesh has enacted the Arunachal Pradesh Tenancy Act, 2022, which received

the consent of the Governor of Arunachal Pradesh on 03.11.2022, and come into effect w.e.f. 14.11.2022, and as per Section 47 of the said Act, the earlier Act i.e. Arunachal Pradesh Building (Lease, Rent and Eviction) Control Act, 2014, was repealed and the Department is preparing the proposal for notifying the 'Rent Authority' as per provision under Section 30 of the Act and 'Rent Court', as per provision under Section 33 and 'Rent Tribunal' as per the provision under Section 34 of the said Act.

7. Whereas, the respondent Nos.5 & 7, in their affidavits have taken a stand that on receipt of the complaint from the respondent No.8, and in absence of appointment of 'Rent Authority' under the Act of 2022, as per administrative practice and balance of convenience and in the interest of both the building owner and the tenant, the said complaint was taken up as usual, for hearing and having been consented by both the parties, the impugned order, dated 02.12.2022, was passed and the lease agreement was extended till 31.08.2023.

8. Mr. K. Lollen, learned counsel for the petitioner, referring to the impugned order at page 37 of the writ petition (Annexure-5) submits that the said order was passed by the EAC, Naharlagun, without any jurisdiction, neither in his capacity as a 'Controller' under the Act of 2014, nor as the 'Rent Authority' under the new Act of 2022 and therefore, it is contended to set aside and quash the same.

9. Whereas, Mr. S. Tapin, learned Sr. Govt. Advocate, Arunachal Pradesh, appearing for the State respondent, fairly submits that the impugned order was passed as per the administrative practice, not in the capacity as 'Controller' under the Act of 2014, nor as the 'Rent Authority' under the new Act of 2022. Further, Mr. Tapin submits that the process for appointment of 'Rent Authority' under the new Act is going to and it would notified very shortly.

10. Having heard the submission of learned Advocates of both sides, I have carefully gone

through the petition and the documents placed on record and also perused the relevant provisions of law and also the impugned order, dated 02.12.2022, which is reproduced her-in-below for ready reference:-

“ORDER

Shri Nyai Ragi, Proprietor M/s Brothers Enterprise (Authorised Dealer of Hero Moto Corp. Ltd. located at ‘C’ Sector, Naharlagun is hereby allowed to run the business in the private building of Shri Rebom Nguso till 31/08/2023. Shri Rebom Nguso building owner is directed to reconnect the electricity supply in the work place of Shri Nyai Ragi with immediate effect.

No further extension or notice shall be serve to Shri Nyai Ragi for vacation of the building.

(Likhi Radh)

APCS

Extra Assistant Commissioner,

Naharlagun.

11. A cursory perusal of the aforesaid order indicates that the said order was passed by the EAC, Naharlagun in the capacity as EAC, Naharlagun, not as the ‘Controller’ as provided in the Act of 2014, nor as the ‘Rent Authority’ under the Act of 2022. Admittedly, the Government has not appointed the ‘Rent Authority’ under Section 30 of the Act of 2022. And admittedly, the earlier Act of 2014 was repealed by the new Act of 2022, as per provision under Sub-Section (I) of Section 47. In view of repelling of the earlier Act of 2014, by the Act of 2022 and also in view of the admission of the respondent authorities regarding non-appointment of ‘Rent Authority’ as per Section 30 of the Act of 2022, the EAC, Naharlagun has no jurisdiction to entertain the complaint of the respondent No.8 and to pass the impugned order. Though, a stand is being taken in the affidavit of the respondent Nos.5 & 7 and also submitted by the learned counsel for the State respondents, that the impugned order, dated 02.12.2022 was passed, as per administrative practice, as is being done in similarly situated matters and

having been consented by the parties mutually, the lease deed is extended to 31.08.2023, yet, the same is found to be fallacious in as much as, neither the Act nor any Rule have authorize the EAC, Naharlagun to pass such an order. In absence of the power being given by any Act or Rule in that regard, the learned EAC, Naharlagun cannot assume the same from outside its allocated spheres.

12. Under the above facts and circumstances, I find sufficient merit in this petition and also in the submission, so advanced by Mr. K. Lollen, learned counsel for the petitioner. And accordingly, the petition stands allowed. The impugned order dated 02.12.2022 of the learned EAC, Naharlagun, having been passed without any authority of law, stands set aside and quashed.

13. In terms of the above, the Writ Petition stands disposed of leaving the parties to bear their own costs.

JUDGE

Comparing Assistant