

GAHC010205432019



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

Case No. : WP(C)/6334/2019

LAKHMI NANDI SARMA
W/O. LT. GIRINDRA SARMA, R/O. EWS BUILDING NO.L, UNIT NO.-17,
UNDER RHS SCHEME, BHETAPARA, GUWAHATI-28, P.S. HATIGAON, DIST.
KAMRUP (M), ASSAM.

VERSUS

THE STATE OF ASSAM AND ANR.
REP. BY THE COMM. AND SECY., DEPTT. OF URBAN DEVELOPMENT
DEPTT., DISPUR, GUWAHATI-781006.

2:THE ASSAM STATE HOUSING BOARD

REP. BY ITS COMMISSIONER
RADHA GOBINDA BARUAH ROAD
GUWAHATI-781005

For the petitioner (s) : Mr. G. Uddin, Advocate

For the respondent (s) : Mr. T. R. Gogoi, Advocate

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
O R D E R

18.12.2023

The instant writ petition has been filed by the petitioner challenging the eviction letter dated 26.07.2019 issued to one Ritupon Deka on the ground that the said Ritupon Deka was an unauthorized occupant of the Flat in question which was allotted to the petitioner.

2. From the facts mentioned in the writ petition, it reveals that vide the office order dated 09.06.2006, the respondent No.2 had allotted a residential unit vide EWS Building No.L, Unit No.17 under Rental Housing Scheme at Bhetapara to the petitioner at the monthly rent of Rs.650/-. It further reveals from the perusal of the writ petition that there were various defaults in payment of rent for which show cause notices were issued. However, subsequently another show cause notice was issued to one Ritupon Deka on the ground that he was in unauthorized occupation in the said Flat and it is under such circumstances, the petitioner has approached this Court by filing the writ petition.

3. It reveals from the records that vide an order dated 02.09.2019, this Court had issued notice and pending notice, the status-quo as regards possession was directed to be maintained. Thereupon, the matter was not listed for a long time. On 15.12.2023, when the matter was listed, Mr. T. R. Gogoi, the learned Standing Counsel appearing on behalf of the respondent No.2 submitted that he had received the instructions and would like to file an affidavit. Pursuant thereto, on 28.11.2023, an affidavit

was filed wherein it was mentioned that in terms with Rule 15 (1) (p) of the Assam State Housing Board Rules, 1976, if an allottee ceases to occupy the premises for a continuous period of 14 days without the previous permission in the writing of the Board, the permission to occupy shall cease forthwith. It was mentioned that in view of the fact that the petitioner was never in possession at that point of time and it was one Ritupon Deka who was in occupation, the said notice was issued. It was also mentioned that the petitioner concealed the fact that her allotment was already cancelled vide order dated 18.09.2017. Further to that, referring to Rule 15 (1) (f) of the Assam State Housing Board Rules, 1976, it was mentioned that the petitioner herein could not have assigned/sublet or otherwise transferred the possession of the premises or any part thereof to any other person. It was mentioned that just prior to the filing of the affidavit, an enquiry was conducted wherein it was found that one Safiquil Islam was in occupation of the said Flat in question.

4. On 29.11.2023, when the matter was listed before this Court, this Court taking into account the contents of the affidavit directed the Officer-in-Charge, Hatigaon Police Station to make an enquiry and submit a report on 30.11.2023 at 10:15 AM. Accordingly, the report was submitted on 30.11.2023 by one S.I.(P) Kuldeep Mazumdar of Hatigaon Police Station wherein he mentioned that he had made a personal visit to the Flat in question and found the son of the petitioner along with one Safiquil Islam residing in the said Flat. Along with the said report, the Aadhar Cards of the said Safiquil Islam as well as the petitioner's son were enclosed.

5. When the matter was listed before this Court on 30.11.2023, this Court taking into account the said report granted an opportunity to the

petitioner to submit affidavit in respect to the said report as well as also to bring on record the rent receipts paid in respect to the Flat in question for the period during which the instant writ petition has been pending.

6. Record further reveals that the said affidavit was duly filed by the petitioner wherein it was contended that not only the son of the petitioner along with the said Safiqul Islam was present on the date on which the inspection was carried out by the Police Official of Hatigaon Police Station, but she was also present. It was also mentioned that the petitioner had paid the rent till December, 2020. However, she clarified that she has paid the rent directly to the Assam State Housing Board till November, 2017, but thereafter upon approaching, as the authorities had refused to accept the rent, the said rent was duly deposited before the Court in terms with Section 5 (4) of the Assam Urban Area Rent Control Act, 1972.

7. This Court has duly heard the learned counsels for the parties and perused the materials on record. This Court has also taken note of the Aadhar Cards of both the petitioner as well as the son of the petitioner. Surprisingly, the Aadhar Cards mention some other addresses other than the address of the Flat in question which have been mentioned while allotment was given to the petitioner.

8. This Court also finds it relevant to take note of that the allotment was cancelled as far back in the year 2017 and the said allotment order has not been put to challenge in any proceedings. Further, the aspect of cancellation of the allotment was not disclosed in the writ petition. This aspect clearly shows that the instant writ petition suffers from suppression of material facts in as much as the said aspect had a vital bearing on the adjudication of the instant writ petition. Further to that, as on today also

the order of cancellation of the allotment holds the field for which there can be no direction passed upon the respondent No.2 not to evict the petitioner.

9. Taking into account the above, this Court, therefore, dismisses the instant writ petition for the reasons above noted.

10. In view of the above findings and analysis, the respondent No.2 would be at liberty to take appropriate actions as permissible for eviction of the petitioner.

JUDGE

Comparing Assistant