

GAHC010208602022



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

Case No. : WP(C)/6691/2022

SMT. JHONMONI SARMA
D/O MR. DEBEN SARMA, R/O BIHUFIELD, GOALPARA, P.O. AND P.S.-
GOALPARA, DIST- GOALPARA, ASSAM, PIN-783121
VERSUS
THE ASSAM STATE HOUSING BOARD AND 2 ORS
REPRESENTED BY ITS CHAIRMAN, R.G. BARUAH ROAD, GUWAHATI-5
2:THE VICE-CHAIRMAN
ASSAM STATE HOUSING BOARD
R.G. BARUAH ROAD
GUWAHATI-5
3:THE ESTATE OFFICER
ASSAM STATE HOUSING BOARD
R.G. BARUAH ROAD
GUWAHATI-

Advocate for the Petitioner : MR. N PATHAK

Advocate for the Respondent : SC, A S H B

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

10.04.2023

1. Heard Mr. N. Pathak, learned counsel for the petitioner. Also heard Mr. T.R. Gogoi, learned counsel for all the respondents.
2. Mr. N. Pathak, learned counsel for the petitioner submits that the petitioner who was working as an Assistant Professor of Science since 2015 in Beinstain

College, was illegally evicted from the residential unit allotted to her, without issuing any prior notice. He submits that the petitioner was allotted a residential unit bearing LIG Building No.C, Flat No.16 at Bhetapara Housing Complex under the terms and conditions laid down in Assam State Housing Board Act and Rules, vide office order dated 25.05.2016.

3. The petitioner's grievance is that she stayed at her parental home due to the Pandemic and to look after her father. Further, she has left her job in the College. However, she was forcefully ousted from the aforesaid residential unit in March, 2022 during her absence and that all her moveable properties from the said residential unit had also been taken away.

4. The specific case of the petitioner is that no notice was issued to her, prior to her eviction from her residential unit. Though the petitioner had submitted representations and had also tried to deposit rent, no action has been taken by the respondents to allow her to enter into her residential unit. The petitioner's counsel accordingly prays that a direction should be issued to the respondents, to allow the petitioner to enter her residential unit and direct them to return all her moveable goods that were taken out from the petitioner's residential unit.

5. Mr. T.R. Gogoi, learned counsel for the respondents, on the other hand submits that in terms of Rule 15(1)(p) of the Assam State Housing Board Rules, 1976, hereinafter referred to as the "1976 Rules", the petitioner has to occupy the residential unit continuously and if the petitioner is to leave the premises for a continuous period of 14 days, the previous permission of the Board in writing, has to be taken. He submits that the petitioner had been absent for a couple of

years and that the petitioner had been residing in her native village at Goalpara with her parents. He also submits that the respondents had issued various notices to the petitioner, vide various letters and even asked her to vacate her flat in question in terms of Section 54(1) of the Assam State Housing Board Act, 1972, hereinafter referred to as the "1972 Act". However, the petitioner did not reply to any of the notices. Further, several notices had been issued to the petitioner asking her to make payment of the outstanding dues from September, 2019 to July, 2022, which was not paid. He accordingly submits that there was no infirmity with the decision of the respondents in evicting the petitioner from her residential unit.

6. Rule 15(1)(b), 15(1)(p) and 15(1)(q) of the "1976 Rules" states as follows :

"Rule 15(1)(b)- the employees shall pay monthly rent at such rates as may be fixed by the Board from time to time."

"Rule 15(1)(p)- if he or any person of his family authorized to occupy the premises ceases to occupy the premises for a continuous period of 14 days without the previous permission in writing of the Board, the permission to occupy shall cease forthwith."

"Rule 15(1)(q)- if and whenever the monthly rent fixed under condition (b) or any other part thereof shall be in arrears, the same shall be recoverable by the Board as arrears and land revenue and if such rent to any part thereof shall be in arrears for a period of two months whether the same shall have been legally demanded or not, or if and whenever there shall be breach of any other provision herein contained the right of occupancy shall be deemed to be determined and the Board may there upon re-enter the premises."

7. The affidavit of the respondent nos.1, 2 & 3 shows that several notices dated 29.02.2020, 18.06.2020 and 28.08.2020 had been issued to the petitioner, asking her to make payment of the outstanding house rent amounting to Rs.27,740/-, for the period from September, 2019 to July, 2020. However, the same was ignored by the petitioner. Thereafter, notice dated 11.11.2020 had been issued, asking why the petitioner should not be ordered to vacate the residential unit and vide show-cause-notice dated 18.12.2020, the petitioner was asked as to why she would not be forcefully vacated from the premises. Vide show-cause-notice dated 28.01.2021, the petitioner was granted 1 (one) month's time to vacate the flat in question in terms of Section 54(1) 1972 Act. Thereafter Notice dated 14.02.2022 was issued to the petitioner, fixing 07.03.2020 for eviction of the petitioner. Finally, on 07.03.2022, the eviction drive against the petitioner was completed by the respondents and her belongings have been kept in the safe custody of the respondents.

8. Section 54(1)(a)(i), 54(1)(b) and 54(2) of the 1972 Act is reproduced below as follows :

“54(1) if the competent authority is satisfied –

(a) that the person authorised to occupy any Board premises has,

(i) not paid rent lawfully due from him in respect of such premises for a period of more than two months, or”

“54(1)(b) that any person is in unauthorised occupation of any Board premises, the competent authority may, notwithstanding anything contained in any law for the time being in force, by notice served (i) by post, or (ii) by affixing a copy of it on the outer door or some other conspicuous part of such premises, or (iii) in such other manner as may be prescribed, order that person as well as any other person who may be

in occupation of the whole or any part of the premises, shall vacate them within one month of the date of the service of the notice."

"54(2) Before an order under sub-section (1) is made against any person the competent authority shall inform the person by notice in writing of the grounds for which the proposed order is to be made and give him a reasonable opportunity of tendering an explanation and producing evidence, if any, and to show cause why such order should not be made, within a period to be specified in such notice. If such person makes an application to the competent authority for extension of the period specified in the notice, the competent authority may grant the same on such terms as to payment and recovery of the amount claimed in the notice as he deems fit. Any written statement put in by such person and documents produced in pursuance of such notice shall be filed with the record of the case and such person shall be entitled to appear before the Officer proceeding in this connection by advocate, attorney or pleader. Such notice in writing shall be served in the manner provided for service of notice under sub-section (1)."

9. As can be seen from the averments made by the respondent nos.1, 2 & 3, notices were apparently issued to the petitioner. The petitioner might not have received the notices, as the petitioner did not appear to be living in her premises allotted to her.

10. The above being said, it would be prudent to consider the affidavit filed by one Sri Dilip Das, S/o Aniram Das, resident of LIG Flat No.14, Building No.'C', who was a neighbour of the petitioner. The affidavit filed by Sri Dilip Das had been made in terms of the order dated 19.10.2022 passed by this Court, wherein it had directed the parties herein, to produce an affidavit filed by an immediate neighbour of the writ petitioner, on the question whether the writ

petitioner was continuously occupying the premises concerned.

The affidavit of Sri Dilip Das, neighbour of the petitioner, which was filed on 26.10.2022, states that he has been residing in his flat since 2014 as a tenant, which is situated in front of the LIG Flat No.16 allotted to the petitioner. As far as Sri Dilip Das recalls, he met and got introduced to the petitioner in the month of January, 2018 when she was residing in LIG Flat No.16. However, he had neither seen any door or window of the LIG Flat No.16 in open position, nor seen the petitioner or any person entering the LIG Flat No.16 thereafter, since 2018.

11. The affidavit of Sri Dilip Das, neighbour, which has been made on the basis of the order dated 19.10.2022 passed by this Court, shows that the petitioner has not been residing in LIG Flat No.16 since the year 2018, which is apparently in violation of Rule 15(1)(p) of the "1976 Rules".

12. Section 54(1)(a)(i) of the 1972 Act states that if the competent authority is satisfied that the person authorized to occupy any Board's premises, has not paid rent lawfully due from him in respect of such premises, for a period of more than two months, it may order that person to vacate the whole or any part of such premises within 1 (one) month of the date of service of notice. However, Section 54(2) of the 1972 Act requires that before an order under Sub-Section (1) of Section 54 is made, notice has to be issued to the petitioner in writing. Thereafter, if the said person refuses or fails to comply with an order made under Sub-Section (1), the competent authority may evict that person and take possession of the premises.

13. The challenge made to the eviction of the petitioner is only on the ground that no prior notice was issued to the petitioner. However, the respondents have taken a stand and given particulars of the various notices issued to the petitioner, prior to her eviction from the residential unit. On a perusal of the Assam State Housing Board Act and Rules, it is quite apparent that an order for eviction or reaction of eviction has to be preceded by a prior notice. In the present case, the affidavit of neighbour Dilip Das, who states that he did not see the petitioner or any other person entering LIG Flat No.16 since 2018, clearly indicates that the petitioner did not reside in the said allotted residential unit for a number of years. Though attempts to give prior notice to the petitioner was made by the respondents, due to the petitioner not residing in residential unit, notice could not be served upon her, due to no fault of the respondents.

14. *Prima facie*, there does not appear to be any infirmity in the action/decision taken by the respondents, except the fact that no prior notice was received by the petitioner. Accordingly, it is the view of this Court that post decisional hearing would amount to sufficient compliance with the principles of natural justice, keeping in view the facts and circumstances of this case. Accordingly, the respondents are directed to issue a fresh notice to the petitioner, with regard to the reasons for evicting the petitioner, including non-payment, of rent to which the petitioner should make a reply. The notice should be sent to the address of the petitioner, given in the Cause Title of this petition, by registered post with AD, within a period of two weeks from today. The respondents shall thereafter take a decision on the reply made by the petitioner, within a period of 1 (one) month from the date of receipt of the petitioner's reply.

15. The respondents shall also, in the meantime, return all the personal belongings of the petitioner, on the date when the petitioner goes to take the same from the respondent nos.1, 2 & 3.

16. The writ petition is accordingly disposed off.

JUDGE

Comparing Assistant