

GAHC010257992022



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

Case No. : WP(C)/8142/2022

DR. SYED MUSTAK HUSSAIN
SON OF LATE SYED MOHAMMED HUSSAIN,
RESIDENT OF HOUSE NO. 9,
GOVT. PRESS ROAD, BAMUNIMAIDAM,
P.O.- BAMUNIMAIDAM, P.S.- NOONMATI,
GUWAHATI, DISTRICT- KAMRUP(M),
PIN- 781021, ASSAM.

VERSUS

THE GOVERNMENT OF ASSAM AND 6 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM,
ENVIRONMENT AND FOREST DEPARTMENT,
ASSAM SECRETARIAT, A BLOCK,
THIRD FLOOR, DISPUR, GUWAHATI-6.

2:THE POLLUTION CONTROL BOARD
ASSAM
REPRESENTED BY THE MEMBER SECRETARY

BAMUNIMAIDAM
GUWAHATI- 21.

3:THE REGIONAL HEAD
GUWAHATI REGIONAL OFFICE

POLLUTION CONTROL BOARD
ASSAM

GOVT. PRESS ROAD
BAMUNIMAIDAM

GUWAHATI-21.

4:THE SENIOR ENVIRONMENTAL ENGINEER
REGIONAL OFFICE
GUWAHATI- I

POLLUTION CONTROL BOARD
ASSAM

GOVT. PRESS ROAD
BAMUNIMADAM

GUWAHATI-21.

5:THE CHIEF ENGINEER
POLLUTION CONTROL BOARD
REGIONAL OFFICE
GUWAHATI- I

POLLUTION CONTROL BOARD
ASSAM

GOVT. PRESS ROAD
BAMUNIMADAM

GUWAHATI- 21.

6:THE ENVIRONMENTAL ENGINEER

REGIONAL OFFICE-I
GUWAHATI

GUWAHATI- I
POLLUTION CONTROL BOARD
ASSAM

GOVT. PRESS ROAD
BAMUNIMADAM
GUWAHATI- 21.

7:THE EXECUTIVE ENGINEER
PWD
DISPUR AND GUWAHATI EAST TERRITORIAL BUILDING DIVISION

GUWAHATI FANCY BAZAR
GUWAHATI- 01

Advocate for the Petitioner : MR. S S S RAHMAN

Advocate for the Respondent : SC, FOREST

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 26.06.2023

Heard Mr. S.S.S. Rahman, learned counsel for the petitioner. Also heard Ms. S. Ahmed, learned counsel appearing for respondent No.1; Mr. S. Baruah, learned Standing counsel, Pollution Control Board representing respondent Nos. 2 to 6 and Mr. G. Gogoi, learned Standing counsel, PWD representing respondent No.7.

2) By filing this writ petition under Article 226 of the Constitution of India, the petitioner is seeking a direction upon the respondent authorities for making payment of a sum of Rs.9,96,384/- (Rupees nine lakhs ninety six thousand three hundred eighty four only) as arrear enhanced rent for the period of 01.05.2020 to 31.12.2022.

3) In brief, the case of the petitioner is that vide agreement dated 01.05.2017, he had let out his Ground + one storied RCC building to the Pollution Control Board, Assam, initially for a period of 3 (three) years at the provisional rent of Rs.38,000/- (Rupees thirty eight thousand only) per month, which was to be assessed and fixed by the Assam PWD, Building Division-I. After the expiry of the agreed term, the Pollution Control Board did not enter into a fresh tenancy agreement with the petitioner. Therefore, the petitioner had requested the Pollution Control Board, Assam for enhancement of rent as per the

assessment made by the Assam PWD. The representations to the Pollution Control Board, Assam for enhancing of their rent did not yield any result. However, the Pollution Control Board, Assam had vacated the tenanted premises on 31.12.2022, without paying the arrear enhanced rent from 01.05.2020 to 31.12.2022. Hence, this writ petition.

4) The learned standing counsel for the Pollution Control Board, Assam, had submitted that the petitioner can avail alternative and efficacious remedy by approaching the civil court for determination of rent and recovery of arrear rent, if so determined by the Civil Court. Considered the said objection. The Court is conscious of the fact that ordinarily, the Court would not invoke its extraordinary jurisdiction in matters relating to enhancement of rent and recovery of rent by exercising self restrain because the relief as prayed for can be effectively adjudicated by the Civil Court. Nonetheless, due to the reasons which would be assigned herein after, the Court is inclined to take up the hearing of the matter on merit.

5) In this case, although the petitioner and the Regional Office, Pollution Control Board, Assam had entered into an agreement dated 01.05.2017 and had agreed to provisionally fix the rent at Rs.38,000/- per month, but the said agreement also contained a clause that the rent would be assessed by the Assam PWD Building Division-I. There is no doubt that the Pollution Control Board, Assam is a statutory body, which is performing a sovereign duty. The said authority was aware that initially the agreement was for a period of 3 (three) years, which

would expire on 30.04.2020. Therefore, if the Pollution Control Board, Assam wanted to over-stay in the premises, it owed a duty towards the petitioner- landlord of requesting the Assam PWD Building Division-I to fix rent, as it is required to be done for any Government establishment if it is set up on rented premises.

6) In this case, the petitioner had written several letters to the authorities of the Pollution Control Board, Assam for enhancement of rent. Accordingly, the officers of the Pollution Control Board had written to the Member Secretary, Pollution Control Board, Assam for enhancement of rent w.e.f. 01.04.2019 as per Govt. of Assam, PWD (Building) Assessment. Thereafter, the Member Secretary, Pollution Control Board had written to the petitioner by letter dated 29.09.2021 to submit re-assessment of rent by PWD (Building) Govt. of Assam for re-fixation of rent. Accordingly, the petitioner had written to the Executive Engineer PWD Guwahati Building Division-I for assessing the rent for the house which was occupied by Regional Office, Guwahati -I and II.

7) The Executive Engineer, PWD, Dispur and Guwahati East Territorial Building Division, Guwahati, by letter dated 21.05.2022, forwarded the statement of calculation of rent, which was assessed at Rs.30,508/- for the ground floor and Rs.38,629/- for the first floor, which was forwarded by the petitioner on 23.05.2022 to the Member Secretary, Pollution Control Board, Assam. As the date from when the enhancement would be effective was not mentioned in the assessment made by the PWD, the Member Secretary, Pollution Control Board had

written letter dated 01.06.2022 to the Regional Heads to obtain clarification. The said request was forwarded to the petitioner vide letter dated 08.06.2022 by the Senior Environment Engineer, Regional Office, Pollution Control Board. The petitioner by his letter dated 13.06.2022, wrote to the said Senior Environmental Engineer to abandon fractions of time period and at least fix the enhancement rent from 01.05.2020, the date when the lease had expired. This was followed by reminder dated 13.07.2022. The Member Secretary, Pollution Control Board, Assam by letter dated 01.08.2022, made a counter offer to pay rent at the rate of Rs.23,000/- per month for ground floor and Rs.25,000/- per month for first floor. By letter dated 22.08.2022, the petitioner had insisted for PWD assessed rent. Thereafter, by letter dated 01.11.2022, the Senior Environmental Engineer, Regional office, Pollution Control Board had requested the petitioner to take over the possession of the house on 31.12.2022.

8) The learned counsel for the petitioner has referred to the contents of letter dated 01.08.2022 issued by the Member Secretary, Pollution Control Board, Assam to the petitioner wherein the said authority had agreed to consider the payment of rent at the rate of Rs.23,000/- per month for the ground floor and Rs. 25,000/- per month for the first floor. Hence, it is submitted that based on the contents of the said letter dated 01.08.2022 (Annexure-K), the petitioner would accept a direction to the Pollution Control Board to make payment of the arrear rent as indicated in the letter dated 01.08.2022, effective from 01.05.2022 till 31.12.2022.

9) Under such circumstances, this Court is inclined to invoke the writ jurisdiction of this Court under Article 226 of the Constitution of India to direct payment of enhanced rent to the petitioner in terms of letter dated 01.08.2022 (Annexure-K), issued by the Member Secretary, Pollution Control Board, Assam to the petitioner wherein the said authority had agreed to consider the payment of rent at the rate of Rs.23,000/- per month for the ground floor and Rs. 25,000/- per month for the first floor, effective from 01.05.2022 till 31.12.2022, when the Pollution Control Board had vacated the tenanted premises.

10) The Pollution Control Board, Assam is an instrumentality of the State and therefore, it is not expected to behave like an ordinary tenant by leaving a tenanted premises without paying lawful rent due to a citizen-landlord. When a citizen is letting out his property to the State, they never doubt the bona fide of the State, and therefore, they expect a fair deal from the responsible officers of the State. It would be a dark day in our Country, when an ordinary citizen shall start doubting the bona fide of a responsible State controlled institution like Pollution Control Board, Assam that if they do not take security or advance, one day they will leave the building without paying rent. Moreover, in this case, while entering into a rental agreement with the Pollution Control Board, the petitioner had provisionally fixed the rent at Rs.38,000/- per month, agreeing that he would accept rent fixed by the Assam PWD (Building). When it came to the enhancement of rent, when asked, the petitioner had approached the Assam PWD (Building) for assessment of rent, which they did by assessing rent at the rate of Rs.30,508/- for the ground floor and Rs.38,629/- for the first floor. In

the affidavit-in-opposition filed by the respondent nos. 2 to 6, it is seen that the Regional Office, Pollution Control Board, Assam in its letter No. APCB/ROG/G-23/Pt-II/93-94/214/243 dated 10.11.2022 had requested the Executive Engineer, PWD to provide House Rent Assessment Report of the Ground floor and First floor separately as per rates prevailing on 01.05.2020 to enable the office to clear the arrear dues on account of the house rent since 01.05.2020. However, after the petitioner had provided assessment made by PWD for enhancement of rent, the Member Secretary, Pollution Control Board had used his superior bargaining power to reduce the rent to Rs.23,000/- per month for ground floor and Rs.25,000/- per month for the first floor. When the petitioner has approached this Court, the Pollution Control Board, like any ordinary, common or unscrupulous tenant, is raising the point that the petitioner should approach the civil Court. Thus, this is clearly a case where the action of the Pollution Control Board, Assam of leaving the tenanted premises without paying rent to the petitioner is not at all appreciated. It is under such circumstances, that this Court is inclined to invoke extra-ordinary writ jurisdiction in the matter to direct the respondent nos. 2 to 6, jointly and severally to make payment of a sum of Rs.23,000/- per month for the ground floor and Rs.25,000/- per month for the first floor from 01.05.2022 to 31.12.2022 in terms of the letter No. WB/G-1226/15-16/93/972 dated 01.08.2022, issued by the Member Secretary, Pollution Control Board, Assam. The said payment shall be released within the outer period of 3 (three) months from the date when a certified copy of this order is served in the Office of the Member Secretary, Pollution Control Board, Assam. If payment is not

made within the time allowed, the petitioner would be entitled to interest on the said rent at the rate of 9% per month from the date of default till realization of money.

11) It is made clear that the payment of the admitted rent would not be a bar for the petitioner to approach the Civil Court for determination of just and fair rent in accordance with law.

12) Accordingly, this writ petition stands partly allowed to the extent as indicated above. No cost.

JUDGE

Comparing Assistant