

GAHC010190782024



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

Case No. : WP(C)/4852/2024

ARINDAM PAUL
S/O LATE HARIDHAN PAUL,
HAPPY LODGE, SHYAMAPRASAD ROAD, SHILLONGPATY SILCHAR, DIST
CACHAR, ASSAM 788001

VERSUS

THE KARBI ANGLONG AUTONOMOUS COUNCIL AND ANR
REPRESENTED BY THE PRINCIPAL SECRETARY, DIPHU, ASSAM 782460

2:THE PRINCIPAL SECRETARY
KARBI ANGLONG AUTONOMOUS COUNCIL
DIPHU ASSAM 78246

Advocate for the Petitioner : MR S BORTHAKUR, MR SAURADEEP DEY

Advocate for the Respondent : SC, K A A C,

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

01.10.2024

Heard Mr. S. Dey, learned counsel for the petitioner and Mr. J. Chutia,
learned counsel for the KAAC.

2. The petitioner's case is that pursuant to a tender notice dated 09.06.2021, the petitioner was selected to run the Karbi Bhawan at Silpukhuri, Guwahati for 15 years @ Rs.18,10,001/- per month, as per the lease agreement dated 14.09.2021 executed by the respondent No. 2 and the petitioner. As the petitioner had not been paying the rent amount regularly, notice had been issued to the petitioner in the year 2023 for payment of the arrear rent. Though some rent amount was paid, all the arrear rent amount was not paid by the petitioner. Thereafter, the impugned letter dated 09.05.2024 was issued by the Principal Secretary, KAAC (respondent No. 2), cancelling the lease agreement, on account of the petitioner having paid rent for only a few months and not for majority of the months.

3. Being aggrieved by the cancellation of the lease agreement dated 14.09.2021, the petitioner has filed the present writ petition, stating that in terms of Clause 31 of the lease agreement, if the 2nd party (petitioner) commits any breach of the terms and conditions of the agreement, the 1st party is to issue written intimation to rectify such breach and if the dispute still exist, the matter was to be referred to the Chairman, KAAC or to a mutually agreed arbitrator for his resolution. The decision/award of the Chairman, KAAC/Arbitrator would be binding upon the parties.

4. Learned counsel for the petitioner submits that as Clause 31 of the lease agreement dated 27.09.2021 has not been invoked by the respondents before cancellation of the lease agreement by the respondent No. 2, the impugned letter dated 09.05.2024, was bad in law and hence liable to be set aside.

5. Mr. J. Chutia, learned counsel for the KAAC has submitted a letter dated

27.09.2024 issued by the Secretary, KAAC, which clearly shows that the issue of non-payment of rent by the petitioner to the respondents, has not been referred to the Chairman, KAAC or an Arbitrator, in terms of Clause 31 of the lease agreement, prior to taking a decision to cancel the lease agreement. Mr. J. Chutia admits to the fact that Clause 31 of the lease agreement has not been followed before issuing the impugned letter dated 09.05.2024. He however prays that the respondents may be allowed to refer the dispute, regarding non-payment of rent by the petitioner to the Chairman, KAAC by the respondent No. 2, in term of Clause 31 of the lease agreement.

6. I have heard the learned counsels for the parties.

7. Clause 31 of the lease agreement dated 27.09.2021 states as follows:-

*“**31.** That, if the 2nd party commits any breach of the terms and conditions of the this agreement, the 1st party will issue written intimation to rectify such breach and if disputes will exist, the matter will be referred to the Chairman, KAAC or to mutually agreed arbitrator for resolution. The necessary expenditure for the arbitration will be borne by the 2nd party. The decision/award of the arbitrator will be binding upon the parties.”*

8. A reading of Clause 31 of the lease agreement clearly shows that if there is any continuing breach/dispute by the petitioner, even after issuance of notice, the matter is to be referred to the Chairman, KAAC or to a mutually agreed Arbitrator, for making a resolution on the dispute between the parties.

9. In the present case, the petitioner has apparently not been paying the

monthly rent regularly, as he was required to do so in terms of the lease agreement. Though notice had been issued to the petitioner prior to the impugned letter dated 09.05.2024, the respondents had not taken recourse to Clause 31 of the lease agreement, which is a sine-qua-non for taking action against the petitioner for breach of any of the terms and conditions of the lease agreement. Accordingly, this Court is of the view that as the impugned letter dated 09.05.2024 has been issued without following the provisions of Clause 31 of the lease agreement, the same is not sustainable. The letter dated 09.05.2024 is hereby set aside. However, as notice for payment of arrear rent has already been issued to the petitioner and if there is a continuing breach of the terms and conditions of the lease agreement, the respondent No. 2 is given the liberty to approach the Chairman, KAAC, in terms of Clause 31 of the lease agreement, for making a resolution in terms of Clause 31 of the lease agreement.

10. The letter dated 27.09.2024 issued by the Secretary, KAAC, is made a part of the record and marked as Annexure-X.

11. The writ petition is accordingly disposed of.

JUDGE

Comparing Assistant