

THE HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_

Writ Appeal No.36 of 2014

1. Sri Sailesh Ch. Bhattacharjee,
2. Sri Sitesh Ch. Bhattacharjee,
3. Smti Anima Roy Chowdhury,
4. Smti Nilima Bhattacharjee,
5. Smti Anjana Bhattacharjee,
6. Smti Archana Bhattacharjee,

All sons & daughters of Lt. Jogesh Ch. Bhattacharjee,
Resident of Jagat Priyo Jogesh Bhawan,
P.O : Khowai, Cinema Hall Road, Pin - 799201.

7. Sri Nabarun Mahalanabish,
S/o Lt. Himanshu Mahalanabish,
C/o Lt. Shanti Mahalanabish,
R/o 70A Friends Roads, Jadabpur,
700075, West Bengal.
8. Sri Debarip Bhattacharjee,
S/o Lt. Debesh Ch. Bhattacharjee,
R/o 6/1 Park Avenue Lake,
East 3rd Road, Sontoshpur,
Kolkata 700075, West Bengal.
9. Smti Santa Bhattacharjee,
W/o Lt. Debesh Ch. Bhattacharjee,
R/o Jagat Priyo Jogesh Bhawan,
P.O : Khowai, Cinema Hall Road,
Pin 799201.
10. Sri Abishek Bhattacharjee,
S/o Lt. Bhabesh Ch. Bhattacharjee,
R/o Jagat Priyo Jogesh Bhawan,
P.O : Khowai, Cinema Hall Road,
Pin 799201.
11. Sri Bijoy Bhattacharjee,
S/o Lt. Bhabesh Ch. Bhattacharjee,
R/o Jagat Priyo Jogesh Bhawan,
P.O : Khowai, Cinema Hall Road,
Pin 799201.

..... *Appellants.*

- Vs -

1. **The State of Tripura,**
Represented by the Revenue Secretary/Commissioner,
Govt. of Tripura, Capital Complex, Agartala, Pin : 799006.
2. **Sri Phanindra Deb,**
3. **Sri Ajoy Deb,**
4. **Sri Ajit Deb,**
5. **Sri Dhirendra Deb alias Dhana Deb,**
6. **Sri Abu Deb alias Sanjit Deb,**
7. **Sri Badal Deb,**
8. **Sri Bakul Deb,**
9. **Smti Prabha Deb,**
10. **Smti Abha Deb,**

Sl. No.2 to 10 are the sons and daughters of
Lt. Rajendra Ch. Deb, R/o Samatal Padmabil, Khowai,
Dist : Khowai, Pin : 799201.

..... *Respondents.*

 _B_E_F_O_R_E
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA
HON'BLE MR. JUSTICE U B SAHA

For the appellants : Mr. K N Bhattacharjee, Sr. Advocate,
Mr. R C Deb, Advocate.

For
Respondent No.1 : Mr. D Chakraborty, Sr. Advocate,
Mr. H Laskar, Advocate.

Respondent Nos.2 to10 : Mr. S Bhattacharjee, Advocate,

Date of hearing : 03.9.2015.

Delivery of judgment : **08.10.2015.**

Whether fit for reporting :

Yes	No
	√

JUDGMENT & ORDER

(Deepak Gupta. CJ)

This writ appeal is directed against the judgment, dated 2nd December, 2013 whereby the learned single Judge dismissed the writ petition filed by the appellants herein.

2. This case has a long drawn out and chequered history. The appellants herein are, admittedly, the landlord/owners and the private respondents are the tenants on the land of the appellants. The parties had engaged in protracted litigation in different fora and finally the landlords filed an eviction petition before the Assistant Settlement Officer under Section 118(1)(d) of the Tripura Land Revenue & Land Reforms Act, 1960(*hereinafter referred to as the Act*) seeking eviction of the respondent tenants on the ground of non-payment of rent. This petition was dismissed and the landlords preferred Appeal Case No.9 of 1978 under Section 93(1)(d) of the Act. The first appeal was also dismissed and thereafter the landlords filed a revision petition invoking the powers of the Tripura Sales Tax Tribunal under Section 95 of the Act. The Tribunal after hearing the parties passed a judgment and ordered eviction of the tenants from the suit land on the ground that the tenants were in arrears of rent.

3. Thereafter the tenants filed a writ petition being Civil Rule No.121 of 1991 before the Gauhati High Court which then exercised jurisdiction over the State of Tripura. A learned single

Judge of the Agartala Bench of the Gauhati High Court found that the Judgment of the Sales Tax Tribunal was not contrary to any provision of law. However, it held that the authority has been given discretion to give a period of six months to the tenants for payment of the rent due before eviction is carried out. The learned single Judge, therefore, modified the judgment & Order in the following terms :

“I would, therefore, like to modify the order of the Sales Tax Tribunal to the effect that the order of eviction may be carried out on expiry of six months from today if the writ petitioner fails to pay the entire arrears of rent payable from the year 1381 B.S till date as per rate agreed upon by the solanama.”

A bare reading of the order shows that the amount of rent was to be deposited as per the rate agreed in the ‘solanama’ which is the agreement entered into between the parties.

4. The terms of the solamana are as follows :

“(1) That the Plaintiff will get the suit claim and the cost of the instant case amounting to /.900/- as Decree against the Defendants. The Plaintiff has withdrawn the remaining claim and it’s cost noted in the suit. The plaintiff will realize Rs.200/- within the 15th day of month of Bhadra and will realise Rs.350/- within the next Magh month and will realise Rs.350/- within next Poush month of the next 1376 B.S. If any installment is not deposited then action will be taken lawfully. Both the parties will bear the expenditures.

(2) That, the total suit land of the schedule is measuring 9(nine) Kanies 1(one) ganda 1(one) kara 1(one) Kranta 7½ Dhurs. As per existing survey of the Settlement on the east

and of it is bounded by – the side of Cherra. The defendants have been dispossessed from the total land measuring .35 acres, recorded in the north padmabil Mouja and the land is recorded in the Khatian No.2.177 and appertaining to Dag Nos.657, 661/11.84 and the remaining land measuring 8 Kanies 3 Gandas 2 Karas 11 Dhurs will be possessed in accordance with the Section 105 of the Land Reforms Act by the Defendants for the term of 5(five) years w.e.f 1375 B.S and the Plaintiff will take total 33 Mons (1320 Kgs.) paddy per year from the defendant within the month of Poush in every year and will hand over the receipt and if the fixed rental has not been realised within that period then they will be evicted from the said land. And the 'Use' will be received for next 5 years further after completion of period."

5. After the learned single Judge passed the judgment the tenants filed another application[CM Appl. No.252 of 2000] praying that they may be told where the amount had to be deposited and in that application an order was passed on 17th July, 2000 that they should pay the amount as per the Judgment & Order passed in Civil Rule No.121 of 1991 before the Registrar, Sales Tax Tribunal within the time granted by the Writ Court. The judgment was passed by the learned single Judge on 10th March, 2000 and that period of 6 months was to expire on 10th September, 2000. On 5th September, 2000 the tenants deposited a sum of Rs.22,500/-. The landlords thereafter filed an application[Barga Case No.2 of 2011] for eviction of the tenants on the ground that the tenants had failed to comply with the judgment passed in Civil Rule No.121 of 1991. It was contended that

the amount was not deposited within 6(six) months and that the amount deposited was not in terms of the solanama. The Revenue Officer i.e. S.D.O., Khowai vide his order dated 30th April, 2002 held that the tenants had properly complied with the order. He has, however, not given any reason and dismissed the application.

6. Thereafter the landlords filed an appeal[Revenue Case No.39 of 2003] before the District Collector and the learned District Collector held that an amount of Rs.22,500/- had been deposited in time on 8th September, 2000. He, however, held that he had no jurisdiction to decide whether the amount of Rs.22,500/- deposited by the tenants as rent was in accordance with the solanama or not. He held that the fact whether this is in accordance with the solanama or not can only be decided by the competent Court. This order was challenged by the landlords by filing Writ Petition No.232 of 2004 which was dismissed by the impugned judgment. The learned single Judge held that the order of the District Collector as challenged in this petition, is exhaustive and he also held that the learned District Collector was correct in holding that the revenue authority is not entitled to interpret the solanama which has been made part of the decree by the Civil Court.

7. This order is under challenge before us. A preliminary objection has been raised by Mr. S Bhattacharjee, appearing on behalf of the respondents that this writ appeal is not maintainable

and he relies upon the judgment of the Apex Court in ***M/s Lokmat Newspapers Pvt. Ltd. Vs Shankarprasad, AIR 1999 SC 243*** in this regard. It is contended by Mr. Bhattacharjee that the impugned order has been passed in exercise of supervisory jurisdiction under Article 227 and therefore, a writ appeal does not lie. It would be pertinent to mention that the writ petition was filed both under Articles 226 and 227 of the Constitution. The learned single Judge while deciding the judgment has not stated that he was only invoking jurisdiction under Article 227 and not under Article 226 of the Constitution.

8. The Apex Court in ***Himalayan Cooperative Group Housing Society Vs. Balwan Singh, JT 2015(5) SC 6241*** held that jurisdiction both under Articles 226 and 227 can be exercised while challenging the order of an inferior Court. When the order of the learned single Judge is not clear as to which jurisdiction he exercised, the right to file an appeal cannot be taken away. In this behalf, reference may be made to the judgment of the Apex Court in ***Umaji Keshao Meshram and others Vs. Radhikabai, widow of Anandrao Banapurkar and another, 1986(supp.) SCC 401*** wherein the Apex Court held as follows :

“107. Petitions are at times filed both under Articles 226 and 227 of the Constitution. The case of Hari Vishnu Kamath v. Syed Ahmad Ishaque and Ors. (AIR 1955 SC 233) before this Court was of such a type. Rule 18 provides that where such petitions are filed against orders of the tribunals or authorities specified in Rule 18 of Chapter XVII of the

*Appellate Side Rules or against decrees or orders of courts specified in that Rule, they shall be heard and finally disposed of by a Single Judge. The question is whether an appeal would lie from the decision of the Single Judge in such a case. In our opinion, where the facts justify a party in filing an application either under Article 226 or 227 of the Constitution, and the party chooses to file his application under both these Articles, in fairness and justice to such party and in order not to deprive him of the valuable right of appeal the Court ought to treat the application as being made under Article 226, and if in deciding the matter, in the final order the court gives ancillary directions which may pertain to Article 227, this ought not to be held to deprive a party of the right of appeal under Clause 15 of the Letters Patent where the substantial part of the order sought to be appealed against is under Article 226.*****”*

9. The Apex Court again in *Sushilabai Laxminarayan Mudliyar and Others Vs. Nihalchand Waghajibhai Shaha and Others*, (1993 (Supp) 1 SCC 11) held as follows :

“4. The Full Bench of the Bombay High Court wrongly understood the above Umaji Kesho Meshram's case (AIR 1955 SC 233). In Umaji's case it was clearly held that where the facts justify a party in filing an application either under Article 226 or 227 of the Constitution of India and the party chooses to file his application under both these articles in fairness of justice to party and in order not to deprive him of valuable right of appeal the Court ought to treat the application as being made under Article 226, and if in deciding the matter, in the final order the Court gives ancillary directions which may pertain to Article 227, this ought not to be held to deprive a party of the right of appeal under Clause 15 of the Letters Patent where the substantial

*part of the order sought to be appealed against is under Article 226.*****”*

10. In cases where the learned single Judge does not clearly indicate that he has exercised jurisdiction either under Article 226 or 227 this Court in ***WA No.38 of 2006, Smt. Sandhy Rani Debbarma and Ors. Vs. The National Insurance Company Ltd.*** held as follows:

“Keeping in view the law laid down by the Apex Court, in case the Single Judge had not expressed any view on the matter then where the petitioner has invoked both Articles 226 and 227, benefit of doubt will have to be given and the appeal would be maintainable.”

11. In view of the above discussion, we are clearly of the view that the objection has to be rejected and the writ appeal is maintainable since the learned single Judge has not stated that he has exercised power only under Article 226 of the Constitution.

12. On the merits of the case we are not in agreement with the learned single Judge. The solanama has been extracted hereinabove. There is no ambiguity in the solanama. The solanama clearly states that the tenants will pay a sum of Rs.900/- as the amount claimed in the suit and the costs of that suit. In addition thereto in the solanama it is stated that on the basis of the area of land held by the tenants and the existing survey of that area the tenants shall pay to the plaintiffs by way of rent a total of 33

Mons(1320 Kgs of paddy) per year. If they do not pay an amount equivalent to the value of the paddy, they are liable to be evicted.

13. All that the Revenue Court has to do is to ascertain the value of the paddy for each year and decide whether the amount paid by the tenants is equivalent to that amount or not. If the amount of Rs.22,500/- deposited by the tenants is equal to the amount of the value of the paddy for the years or exceeds that amount, then obviously the tenants cannot be evicted. In case the amount is less than the value of the paddy, then the tenants are bound to be evicted. It would also be pertinent to mention that earlier in Civil Rule No.121 of 1991, the tenants were granted 6(six) months further time to deposit the rent. No Court or Authority has any jurisdiction to grant them any further time and in case the amount deposited by the tenants is short of the amount actually payable by them, then the tenants are bound to be evicted.

14. In view of the above discussion, we allow the appeal, set aside the judgment of the learned single Judge and remand the matter to the District Collector, Khowai who shall determine the cash equivalent of the paddy payable as rent every year and determine whether the amount deposited by the tenants complies with the direction of this Court in Civil Rule No.121 of 1991 or not. In case the amount is sufficient to meet the rent for the years in question, the application filed by the landlords shall be dismissed and in case the

amount is less than the amount which was required to be deposited then the eviction of the tenants shall be ordered from the land in question.

The writ appeal is disposed of in the aforesaid terms.

JUDGE

CHIEF JUSTICE