GAHC010046172024

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

Case No. : WP(C)/1272/2024

UJJAL BHATTACHARJEE AND 12 ORS
S/O- LATE ATUL CHANDRA BHATTACHARJEE,
H.NO-40,
CHANDMARI, NIZARAPAR, GUWAHATI,
DIST- KAMRUP (M),
ASSAM,
PIN-781003

2: REKHA DUTTA
D/O- LATE BIRENDRA NATH DUTTA
SUNDARBARI
JALUKBARI
GUWAHATI
DIST- KAMRUP(M)
ASSAM
PIN-781014

3: DIPAK KUMAR CHETIA
S/O- DIMBESWAR CHETIA
ASTC COMPLEX
PALTANBAZAR
DIST- KAMRUP (M)
ASSAM
PIN-781008

4: PRANJAL HAZARIKA
S/O- TRILIKYA NATH HAZARIKA
H.NO-21
BYE LANE NO-6
NEW SARANIA

P.O- SILPUKHURI
GANDHIBASTI
GUWAHATI

KAMRUP (M)
ASSAM
PIN-781003

5: MUN MUN CHOUHAN
REP. BY ITS ATTORNEY HOLDER
MOHENDRA SINGH

S/O- LATE RAJENDRA SINGH
SHANKARPUR
BIRUBARI

GUWAHATI
KAMRUP (M)
ASSAM
PIN-781016

6: DEBASISH DAS
S/O- LATE KARUNAMOY DAS
SISTER NIVEDITA DAS
BHASKAR NAGAR

GUWAHATI
KAMRUP (M)
ASSAM
PIN-781018

7: KALYAN DUTTA
C/O- GIRISH CHANDRA DUTTA
FLAT NO-104
RANI BAGAN APARTMENT
BELTOLA

GUWAHATI
KAMRUP (M)
ASSAM
PIN-781028

8: RAJIB CHOUHAN
S/O- CHAKRA BAHADUR CHOUHAN
ASTC COMPLEX
PALTANBAZAR

GUWAHATI
KAMRUP (M)
ASSAM
PIN-781008

9: RAMESH CHANDRA SAHARIA
S/O- LATE TARUN RAM SAHARIA
GOPAL KRISHNA PATH
H. NO -26
NEAR NOVAJYOTI CLUB
HENGRABARI
GUWAHATI
KAMRUP (M)
ASSAM
PIN-781036

10: AMIR HAMZA KHAN
S/O- IMDADULLAH KHAN
F.A ROAD
KUMARPARA

GUWAHATI
KAMRUP (M)
ASSAM
PIN-781001

11: BIJOY KRISHNA PHUKAN
S/O- SMTI BIRINA DAS
H.NO-9

M.C ROAD
UZANBAZAR

GUWAHATI
KAMRUP (M)
ASSAM
PIN-781001

12: PABITRA TALUKDAR
C/O- KHAGEN TALUKDAR
ASTC COMPLEX
PALTANBAZAR

GUWAHATI
KAMRUP (M)
ASSAM
PIN-781008

13: DIPAK KALITA
ASTC COMPLEX
PALTANBAZAR

GUWAHATI
KAMRUP (M)
ASSAM
PIN-78100

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM, DISPUR, GUWAHATI-06

2:THE COMMISSIONER AND SECRETARY
TO THE GOVT. OF ASSAM
STATE TRANSPORT DEPARTMENT
DISPUR
GUWAHATI-06

3:THE ASSAM STATE TRANSPORT CORPORATION ASTC

REPRESENTED BY ITS CHAIRMAN
PALTANBAZAR
GUWAHATI-781008
KAMRUP(M)
ASSAM.

4:THE MANAGING DIRECTOR

ASSAM STATE TRANSPORT CORPORATION ASTC

PALTANBAZAR
GUWAHATI-781008
KAMRUP(M)
ASSAM.

5:THE CHIEF ENGINEER (CIVIL)

ASSAM STATE TRANSPORT CORPORATION ASTC

PALTANBAZAR
GUWAHATI-781008
KAMRUP(M)
ASSAM

B E F O R E
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioners : Shri S. K. Talukdar, Advocate.
Advocates for respondents : Shri D. Saikia, AG.
Shri R. Borpujari, Advocate,

Date(s) of hearing : 12.03.2024
Date of judgment : 12.03.2024

JUDGMENT & ORDER

13 (thirteen) numbers of petitioners have approached this Court challenging, *inter alia,* notices dated 13.02.2024 issued by the Chief Engineer (C) ASTC being the Authorized Signatory informing that the allotment of the schedule premises to the respective petitioners were cancelled with immediate effect and they were directed to vacate the schedule premises and deliver peaceful vacant possession to the ASTC within 30 days. Few of the petitioners were also directed to pay certain outstanding dues to the ASTC.

2. I have heard Shri S. K. Talukdar, learned counsel for the petitioners. The ASTC as well as the State respondents are represented by the learned Advocate General, Shri D. Saikia assisted by Shri R. Borpujari, learned counsel. The learned AG has also referred to the affidavit-in-opposition filed on 05.03.2024.

3. Unfolding his submissions, Shri Talukdar, the learned counsel for the petitioners has submitted that the petitioners are running their business for the

last about 20 years in the premises of the ASTC at Paltanbazar. In this connection, he has referred to the allotment letters to the petitioners and one such allotment in respect of the petitioner no. 1 is dated 17.12.2005. It is submitted that the said allotment letter envisages payment of monthly rent, construction of a room to run the business, revision of rent. The allotment order also contains a clause that if the space is required by the ASTC, the same has to be vacated with a month's notice. It is submitted that the different businesses were run by the petitioners in the space allotted to them by constructing structures which even includes two-storey building. The learned counsel submits that the land of the ASTC cannot be termed as a Government land and existence of the lease makes the ASTC a landlord within the meaning of the ***Urban Areas Rent Control Act, 1972*** (hereinafter the Act of 1972).

4. By referring to the provisions of the Act of 1972, the learned counsel has submitted that though there is no requirement of a notice to vacate unlike Section 106 of the Transfer of Property Act, certain protections are given to a tenant against illegal eviction which are included in Section 5 of the Act. It is submitted that unless the preconditions laid down therein are proved in an appropriate proceedings, a tenant cannot be evicted without a valid decree of a competent Civil Court.

5. On the issue of non-extension of the lease, the learned counsel for the petitioners has submitted that though the lease was not extended, the position of the petitioners would be "tenants at sufferance". In this connection, he has referred to the case law of ***R V Bhupal Prasad Vs State of A. P. & Ors.*** reported in ***(1995) 5 SCC 698*** wherein it has been laid down that even for "tenants at sufferance", certain rights would accrue upon such parties and they

cannot be evicted without following the due process of law and mere completion of a period of lease would not automatically make such tenants to be illegal trespasses.

6. It is submitted that the entering to the premises was lawful by a valid deed and it is only a matter of convenience that the lease was converted into license which would not otherwise change the nature and character of the landlord tenant relationship between the parties. It is also submitted that the petitioners who are petty businessmen were not at par so far as the bargaining powers with the ASTC is concerned and therefore they had agreed upon conversion on the lease into license. The learned counsel has also submitted that if at all this space in question is required for public interest, there are other space of the ASTC where the petitioners can be accommodated as they are running their business and their livelihood for a long period of time. The learned counsel has referred to the representation dated 19.02.2024 which is pending consideration.

7. *Per contra*, the learned AG has submitted that the present case is a pre-mature one and no cause of action has arisen. He submits that it is a matter of overwhelming public interest for which the present action is being taken as the plot of land in question is being exchanged with the NF Railway for a plot of land at Jalukbari wherein a bus terminus would be constructed. It is submitted that the present plot of land would be made as the second entry point to the Guwahati Railway Station and therefore there is immense involvement of public importance, mainly for the commuters and the passengers.

8. It is submitted by the learned AG that it cannot be said that there is any relationship of landlord and tenant as even the initial allotment letters cannot be

treated as lease inasmuch as the said allotment were given only on some exceptional circumstances to facilitate the passengers using the space for their journey by the ASTC. By referring to the initial allotment orders, the learned AG has submitted that so far as the aspect of investment is concerned, the same was to be adjusted with the monthly rentals and has, in fact, already been done and therefore that issue will not be a relevant issue for consideration. Clause 5 of the allotment order specifically states that the allottee would be required to vacate the space if the ASTC required the same for its own use within a period of a month.

9. It is the submission on behalf of the respondents that in any case, the arrangement was changed into the form of a license from the year 2014 wherein a similar Clause for vacating was there. By referring to the license more particularly Clause-7 thereof, the learned AG has submitted that the licensee would have to vacate the premises in case the space is required by the licensor and such vacation has to be within a period of 1 month from the date of issuance of notice. Under Clause-10, it has been specifically laid down that no right or interest would confer upon the licensee by the said license.

10. By referring to the impugned notice dated 13.02.2024, the learned AG has submitted that the said notices have been issued in terms of the clause of the license and provisions of the allotment order and not under any statute. In any case, by dealing with the submissions that the ***Assam Public Premises (Eviction of Unauthorized Occupants) Act, 1971*** which has been argued on behalf of the petitioners to be not applicable, the learned AG, by referring to Section 2 (c) has pointed out that the definition of public premises includes any premises belonging to the ASTC. However, he clarifies that aspect did not be

gone into as till now no action under any statute has been taken. It is reiterated that the action is not vitiated by any *mala fide* as no individual third party has been sought to be favoured and it is only in the larger interest of the public that the action has been taken.

11. By referring to the affidavit-in-opposition dated 05.03.2024, the learned AG has drawn the attention of this Court to the relevant paragraphs, namely, paragraphs 3, 7, 9 & 11 to substantiate his contentions.

12. Shri Talukdar, the learned counsel for the petitioners in his rejoinder has submitted that so far as the action of creating a second entry point to the Guwahati Railway Station is concerned by allotting the space to the Railways in exchange of another plot of land is concerned, there is no grievance in principle as such and therefore the petitioners have also not taken up the issue of involvement of any *mala fide*. It is however submitted that the ASTC being an instrumentality of the State, the petitioners are required to be dealt in a fair and reasonable manner by which their means of livelihood would not be adversely affected. It is submitted that this Court in exercise of its extra-ordinary powers would balance the equities and may direct the authorities to consider the cases of the petitioners. He submits that even if it is assumed that the Act of 1971 applies, the same also envisages providing of an opportunity to an affected party and eviction cannot be done forcefully.

13. The rival submissions advanced have been carefully considered and the materials placed before this Court have been scrutinized.

14. It appears that initially the petitioners were issued allotment letters and

one such allotment letter so far as the petitioner no. 1 is concerned is dated 17.12.2005. On a bare perusal of such allotment letters, it appears that a relationship of landlord and tenant would appear. However, at the same time, there is a clause which empowers the ASTC to issue vacation orders by which the allottee would be required to vacate the premises within a period of a month if the space is required by the ASTC for its own use. It is also not in dispute that in the year 2014 itself the arrangement was changed to be one under a license and accordingly license were issued to the petitioners, that too for a particular tenure. An examination of the license would show that the tenure was for a period of 3 years from 2014-2017 which was extended from time to time. That being the position, the present challenge has to be examined from the context of the license issued in the year 2014 as in the meantime almost a decade has passed and there was not even a semblance of challenge with regard to change of the arrangement in the meantime. The requirement of the land as an exchange with the NF Railway for creating a second entry point to the Guwahati Railway Station is undoubtedly for public purpose and the petitioners have also fairly conceded to this point. In view of the above, the argument made on behalf of the petitioners that they are tenants under the Act of 1972 is not acceptable. Further in view of the aforesaid change of arrangement, the contentions made that the petitioners can be treated as "tenants at sufferance" will not be applicable in the instant case. The only point which requires consideration is as to whether any alternative arrangement can be made so far as the petitioners are concerned. On a specific query, the learned AG has submitted that such consideration may not be possible as any such allotment has to be done from the open market and the petitioners had already got an advantage from running a business from the premises in

question for the last more than two decades.

15. In view of the aforesaid facts and circumstances, this Court is of the considered opinion that no case for interference is able to be made out by the petitioners and accordingly, the writ petition is dismissed. Since this Court has been informed that the period of notice would be expiring tomorrow, the respondent authorities would be at liberty to take action which however has to be strictly in accordance with law.

JUDGE

Comparing Assistant