

GAHC010034972022



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

Case No. : WP(C)/1377/2022

USHMITA DEY AND ANR
D/O- LATE NIRMAL CH. DEY, R/O- 1ST FLOOR, TRIYAMBAK BUILDING,
H/O. 11, NABAGRAHA ROAD, GUWAHATI-781003, DIST. KAMRUP(M),
ASSAM

2: SUSMITA DEY DEKA
D/O- LATE NIRMAL CH. DEY
R/O- 1ST FLOOR
TRIYAMBAK BUILDING
H/O. 11
NABAGRAHA ROAD
GUWAHATI-781003
DIST. KAMRUP(M)
ASSA

VERSUS

LIFE INSURANCE CORPORATION OF INDIA AND 2 ORS
A BODY CORPORATE ESTABLISHED UNDER THE LIFE INSURANCE
CORPORATION ACT, 1956, HAVING ITS CENTRAL OFFICE AT
YOGAKHEMA, JEEVAN BIMA MARG, MUMBAI AND REP. BY ITS EASTERN
ZONAL OFFICE, HINDUSTAN BUILDING, 4, CHITTARANJAN AVENUE,
KOLKATA-700072.

2:THE MANAGER (ESTATE)
LIFE INSURANCE CORPORATION OF INDIA
GUWAHATI DIVISIONAL OFFICE
JEEVAN PRAKASH BUILDING
S.S. ROAD
FANCY BAZAR
GUWAHATI-781001.

3:THE ESTATE OFFICER
LIFE INSURANCE CORPORATION OF INDIA

EASTERN ZONAL OFFICE
HINDUSTAN BUILDING 4
C.R. AVENUE
KOLKATA-70007

Advocate for the Petitioner : MR. N NATH

Advocate for the Respondent :

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

28/02/2022

Heard Mr. N Nath, learned counsel for the petitioners.

The petitioners as franchisee of J.D. Institute of Fashion Technology were in possession of the 2nd and 3rd floor of the public premises, namely, Jivan Nivesh Building, Panbazar, Guwahati, District-Kamrup (M) in the Ward No. 42 of the Guwahati Municipal Corporation standing on the plot of land at Cadastral Survey No. 369 of Patta No. 140 of the respondent Life Insurance Corporation of India. The petitioners on 01.02.2018 handed over possession of the 3rd floor and on 22.02.2018 handed over possession of the 2nd floor of the said premises to the respondent LIC.

In the Reference Case No. EO/93/0321/Misc. *Life Insurance Corporation of India* (applicant) Vs. *M/s. J.D. Institute of Fashion Technology, Guwahati* (the opposite party), the Estate Officer proceeded against the petitioners under the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 by issuing notice under Section 4 of the said 1971 Act for recovery of arrear rent along with applicable taxes and interest thereon for the said premises as well as damages w.e.f. 01.05.2017 till the date of handing over possession of the respective floors of the said premises to the LIC.

Though the petitioners submitted application before the Estate Officers seeking time for re-fixing the matter and to submit reply to the show cause but they did not file any reply nor appeared in the matter. As such, the said proceeding proceeded ex-parte against the petitioners and the Estate Officer by its order dated 25.01.2022 passed in said Reference Case No. EO/93/0321/Misc. delivered an order for recovery of arrears along with interest from the petitioners under Sections 7(2) and 7

(2A) of the said 1971 Act in Form-E prescribed under the said Public Premises (Eviction of Unauthorized Occupants) Act, 1971. The said Estate Officer on 25.01.2022 in the said proceeding also passed an order for recovery of damages from the petitioners under Section 7(2) of the said 1971 Act in Form-G prescribed under the said 1971 Act and Rules pertaining to the schedule of the land, more particularly, described in the said order over which the said Jivan Nivesh Building, Panbazar, Guwahati at Ward No. 42 is standing including its 2nd and 3rd floors of which the petitioners were tenants.

It is contended by the petitioners that the said proceeding under the said 1971 Act being proceeded at Kolkata, West Bengal, whereas the premises in question being at Guwahati, Assam, the said proceeding being not maintainable, therefore, the notice issued under Section 4 of the said 1971 Act by the Estate Officer itself being bad in law, therefore, the impugned order dated 25.01.2022 passed by the said Estate Officer in Reference Case No. EO/93/0321/Misc., noted above, needs to be set aside and quashed.

In this regard, Mr. Nath, learned counsel for the petitioners has placed the provisions of Section 3(b) of the said 1971 Act, which stipulates as follows:-

“(b) The Central Government may, by Notification in the Office Gazette define the local limits within which, or the categories of public premises in respect of which, the Estate Officers shall exercise the powers conferred, and perform the duties imposed, on Estate Officers by or under this Act.”

Though, there is a provision of appeal against the order of the Estate Officer as provided under the provisions of 1971 Act, Mr. Nath, learned counsel for the petitioners, on being enquired submitted that since the notice under Section 4(1) of the said 1971 Act issued by the concerned Estate Officer itself is not maintainable, the petitioners have preferred this writ petition.

Mr. Nath, learned counsel for the petitioners relying on the judgment of the Hon'ble Apex Court in the case of *Savatram Rampratap Mills Vs. Radhey-shyam, s/o. Lakshmi Narayan Goenka (D) Thr. Lrs.* reported in (2018) 9 SCC 154 = AIR 2018 SC 3916 and the provisions of Section 3(b) of the said 1971 Act submitted that the Estate Officer has to exercise its jurisdiction in relation to the public premises falling in the local limits specified in the Notification.

In the present case, the Estate Officer issued notice to the petitioners, where the schedule of the notice clearly specified that the land in question is at Panbazar, Guwahati, District-Kamrup (Metro),

Assam, whereas the venue of the said proceeding was at the Eastern Zonal Office, Hindusthan Buildings, 4, Chitta Ranjan Avenue, Kolkata-700072, West Bengal and as such, the Estate Officer could not have proceeded with the matter as the relevant premises is at Panbazar, Guwahati in the District of Kamrup(M), Assam. As such, petitioners stated that any such proceeding by the Estate Officer should have proceeded at Guwahati considering the fact that the premises in question is in the local limits of Guwahati city, Assam.

Issue notice, returnable by **30.03.2022**.

Petitioners shall take steps for service of notice on the respondent Nos. 1 to 3 by registered post with A/D on or before 02.03.2022, providing their proper and correct addresses with requisite postal stamps.

Subject to taking steps on the respondent Nos. 1 to 3, as directed above, the operation of the impugned order dated 25.01.2022 passed by the Estate Officer respondent No. 3 in said Reference Case No. EO/93/0321/Misc. [*Life Insurance Corporation of India* (applicant) *Vs. M/s. J.D. Institute of Fashion Technology, Guwahati* (the opposite party)] shall remain suspended till the returnable date (i.e., 30.03.2022).

List accordingly.

JUDGE

Comparing Assistant