

GAHC010055232023



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

Case No. : WA/116/2023

RUPANJALI DAS
W/O. SHRI BIVAN KUMAR DAS, R/O. KUMARPARA BHARALUMUKH,
GUWAHATI-781009, DIST. KAMRUP (M), ASSAM.

VERSUS

THE STATE OF ASSAM AND ANR E
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, DISPUR-781006.

2:THE GAUHATI MUNICIPAL CORPORATION

REP. BY ITS COMMISSIONER
GUWAHATI-781001.

3:THE COMMISSIONER

THE GAUHATI MUNICIPAL CORPORATION
GUWAHATI-781001

Advocate for the Petitioner : MR. M A SHEIKH

Advocate for the Respondent : GA, ASSAM

BEFORE
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE DEVASHIS BARUAH

26.06.2023

The instant intra-court appeal is directed against the order dated 19.12.2022 passed in WP(C) No.151/2022 whereby the said writ petition was dismissed on the ground that the writ petition lacked foundational basis as the alleged allotment so made in favour of Basanti Bala Das and Madhuri Bala Das were long dead as well as also on the ground of delay and laches.

2. The facts involved in the instant writ petition are that the Guwahati Municipal Corporation (GMC), i.e. the respondent No.2 herein, had issued a receipt of Rs.1,000/- for Room No.12 on 04.02.1993 in favour of Basanti Bala Das and Madhuri Bala Das, the grandmother in-laws of the petitioner. It is the further case of the petitioner that on 20.03.2002, an official order was issued by the GMC, Guwahati to the grandmother in-laws of the petitioner for clearance of Rs.1,872/- as dues for Room No.12 situated at Machkhowa Temporary Market at monthly rent of Rs.48/-. It is further alleged in the writ petition that the grandmother in-laws of the petitioner had made payment of an amount of Rs.22,000/- as security deposit and Rs.1,000/- for registration towards allotment of Room No.135 as per the notice issued on 11.01.2003. However, the GMC authorities had handed over possession of Room No.100 to the grandmothers of the petitioner which was not fit for business purposes, for which on 05.07.2021, the husband of the petitioner had submitted an application before the

Commissioner, Guwahati Municipal Corporation and a receipt in that regard was given on 12.07.2021. On the basis of the above statements made in the writ petition, a relief was sought that the respondent No.2 be directed to vacate the Room No.135 and to hand over the same to the petitioner instead of Room No.100.

3. The respondent Nos.2 & 3 had filed an affidavit-in-opposition challenging the maintainability of the writ petition on the ground of locus-standi of the writ petitioner; unexplained delay in preferring the writ petition after 33 years as well as pursuing the case without explaining as to whether the grandmothers of the petitioner were surviving or not. It was categorically stated that the petitioner was pursuing the case of dead persons. In paragraph No.5 of the affidavit-in-opposition, it was averred that the Room No.12 was allotted at temporary Fancy Bazar Market, but both the grandmothers of the petitioner failed to pay its rent till 2003 in spite of issuance of several notices. It was further mentioned that in terms with Rule 16 of the Guwahati Municipal Corporation (Regulation of use of Markets and Slaughter House) Bye-laws, 1976, right of tenancy was revoked and forfeited. It was further mentioned that the notice dated 20.02.2002 was issued to clear the dues of Room No.12. As regards the allotment notice for Room No.135 dated 11.01.2003, it was stated that there was no response received from Basanti Bala Das and Madhuri Bala Das-grandmothers of the petitioner. It was further mentioned that the writ petitioner is trying to get more benefit in spite of possessing Room No.100 of the market.

4. The petitioner filed an affidavit-in-reply to the affidavit-in-opposition filed by the respondent Nos.2 & 3. In paragraph No.2 of the affidavit-in-

reply, it was categorically stated that Basanti Bala Das died on 12.06.1979 and Madhuri Bala Das died on 16.11.1981. It further appears from a perusal of the entire affidavit-in-reply that all the payments alleged to have been made by the said Basanti Bala Das and Madhuri Bala Das were much after the death of the said persons.

5. At this stage, this Court also finds it relevant to take note of the representation submitted by the husband of the petitioner enclosed as Annexure-5 to the writ petition. The said representation was submitted on 05.07.2021 and was received by the respondent No.2 on 12.07.2021. From a perusal of the said representation, it discloses that the husband of the petitioner stated therein that he went to check the possession of the room in the year 2003 and the President of GMC Market offered him Room No.100 instead of Room No.135 and as such he refused to take the Room No.100.

6. From the above, it is seen that the representation so submitted was after 18 years. The writ petition thereupon was filed seeking the relief as stated above.

7. The learned Single Judge vide the impugned order, taking note of the fact that Basanti Bala Das expired on 12.06.1979 and Madhuri Bala Das expired on 16.11.1981, observed that on 04.02.1993, none of the two persons were alive, and therefore, there was no foundation for filing the writ petition. The learned Single Judge further was of the opinion that there was delay and laches on the part of the petitioner in approaching this Court and there was no explanation apart from a bald assertion that the husband of the petitioner was suffering from ailments. It is under such circumstances that the writ petition filed by the petitioner was dismissed.

8. We have heard the learned counsel for the writ appellant as well as the learned counsel representing the respondents.

9. From the materials on record, it is apparent that the writ petition was filed claiming that Late Basanti Bala Das and Late Madhuri Bala Das had made certain payments towards security and registration. However, at the time when the alleged payments payment were made, the said persons were long dead, and as such, the basis on which the petitioner claims entitlement to Room No.135 is totally misconceived.

10. The aforementioned details would also show that the husband of the petitioner in his representation dated 05.07.2021 had categorically stated that he was aggrieved by the action of the President of the GMC Market in the year 2003 when he was offered the possession of Room No.100 and not Room No.135. There is no material on record justifying the delay in approaching the respondent authorities in the year 2021, and immediately thereupon filing the writ petition. Under such circumstances, we are of the opinion that the writ proceedings suffer from gross delay and laches.

11. Taking into account the above, we are, therefore, of the opinion that the learned Single Judge had rightly dismissed the writ petition vide the impugned order dated 19.12.2022. Accordingly, we affirm the said order dated 19.12.2022 and dismiss the instant writ appeal.

JUDGE

CHIEF JUSTICE