

GAHC010057172023



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

Case No. : WP(C)/1422/2023

M/S DOWN TOWN HOSPITAL LTD
A COMPANY DULY INCORPORATED UNDER THE COMPANIES ACT 1956
HAVING ITS REGISTERED OFFICE AT G S ROAD GUWAHATI UNDER P.O.
AND P.S DISPUR DIST. KAMRUP ASSAM REP.BY ITS CHAIRMAN CUM
MANAGING DIRECTOR

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE CHIEF SECRETARY TO THE GOV'T. OF ASSAM DISPUR
GUWAHATI 6

2:THE DEPUTY COMMISSIONER AND CHAIRMAN
DISTRICT DISASTER MANAGEMENT AUTHORITY KAMRUP (M)
PANBAZAR GUWAHATI 1

3:THE COMMISSIONER
GUWAHATI MUNICIPAL CORPORATION PANBAZAR GUWAHATI 1

4:THE EXECUTIVE ENGINEER
WATER RESOURCE DEPTT. GUWAHATI EAST DIVISIO REHABARI
GUWAHATI 8

5:THE EXECUTIVE ENGINEER
PUBLIC WORKS DEPTT. (R) DISPUR TERRITORIAL ROAD DIVISION
GUWAHATI 21

6:THE CIRCLE OFFICER
DISPUR REVENUE CIRCLE BASISTHA GUWAHATI 78102

Advocate for the Petitioner : MR. K N CHOUDHURY

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

ORDER

15-03-2023

Heard Shri K. N. Choudhury, learned Senior Counsel assisted by Ms. N. Mahanta, learned counsel for the petitioner. Also heard Shri S. Bora, learned Standing Counsel, GMC.

Considering the nature of the dispute and the broad consensus arrived at by the parties in the Bar, this writ petition is taken up for disposal at the Motion stage.

The petitioner has assailed an order dated 06.03.2023 issued by the Deputy Commissioner and Chairman, District Disaster Management Authority, Kamrup (M) whereby the two bridges which is the approach to the petitioner's Hospital, namely, the Down Town Hospital has been directed to be demolished. The aforesaid order dated 06.03.2023 is in partial modification on an earlier order dated 02.03.2023 whereby the number of demolition of bridges/structures which was initially 89 has been brought down to 26.

The learned Senior Counsel submits that the aforesaid impugned order appears to have been passed in terms of order passed by this Court in PIL 18/2015 (Debendra Narayan Deka Vs State of Assam & Ors). It is submitted that on an earlier occasion, pursuant to directions passed by the Hon'ble Division Bench in the aforesaid PIL, a notice dated 30.07.2016 was issued for demolition, which was the subject matter of challenge in WP(C) No. 4833/2016 on the ground that the demolition order was issued without even giving proper opportunity of hearing to the petitioner. This Court however vide order dated 30.09.2016 had observed that out of the two bridges, there was no objection from the authorities so far as the steel bridge is concerned and so far as the other bridge is concerned, a new design was submitted to the Public Works Department for construction of a new bridge. This Court had accordingly disposed of the aforesaid writ petition vide the order dated 30.09.2016 that the design given for

approval would be considered and upon such approval the petitioner would be at liberty to construct the second bridge. The petitioner has also annexed the necessary permission/sanction for construction of the RCC Bridge by the Public Works Department vide communication dated 29.01.2020, Water Resource Department vide communication dated 01.08.2022 and also by the Gauhati Municipal Corporation vide communication dated 01.10.2022. It is the contention of the petitioner that when rectification has already been done in terms of the order passed by the Division Bench in the PIL, the question of demolition cannot arise more so when the new construction has been done strictly in accordance with the rules.

Shri S. Bora, learned Standing Counsel, GMC however submits that in the list annexed to the notice containing the 26 numbers of incumbents who have been asked to demolish, it has been noted that the present condition of the bridge is narrow in height and width and there is a need to be rectified/demolished. The learned Standing Counsel further submits that in the remarks column the boundary walls are seen towards Bahini River. So far as the recording "narrow height and width" is concerned, the same perhaps cannot be raised as an objection as the construction in question is in accordance with the permission by all the authorities as indicated above.

As regards the observation in the remarks column "boundary wall seen towards Bahini River", the learned Senior Counsel for the petitioner submits that if the boundary wall is a cause of actual concern to the free flow water, necessary action can be taken by the authority. The learned Senior Counsel for the petitioner has even contended to the extent that if there is a requirement of demolition of the bridge, the same has to be reconstructed by the authorities and the petitioner cannot be saddled with the liability for a new construction, once again.

In view of the aforesaid facts and circumstances, this Court is of the opinion that the impugned order so far as it concerned the petitioner at Sl. No. 7 is not sustainable as the insertion of the name of the petitioner in the impugned list appears to be done mechanically and without any application of mind. Therefore, the part of the

impugned order dated 06.03.2023 pertaining to the petitioner and the approach bridges stands set aside.

However, as indicated above, so far as the boundary wall is concerned, it is upto the authorities to make an actual assessment and take action, if required, in accordance with law.

Writ petition accordingly stands disposed of.

JUDGE

Comparing Assistant