

GAHC010189702021



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

Case No.: WP(C)/2585/2020

SANJEEB KUMAR NATH
S/O- LATE BHADRA KANTA NATH
FLAT 1B BLOCK VI
AGRIM VISTA
DHARAPUR
GUWAHATI- 781014

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM
TOWN AND PLANNING DEPTT
DISPUR
GUWAHATI- 781006

2:GUWAHATI METROPOLITAN DEVELOPMENT AUTHORITY
REP. BY THE CHIEF EXECUTIVE OFFICER
3RD FLOOR
STATFED BUILDING
GMC HOSPITAL ROAD
BHANGAGARH
GUWAHATI
ASSAM
PIN- 781005

3:DEPUTY COMMISSIONER
KAMRUP(M) DISTRICT
GOVT OFFICER
MG ROAD
PAN BAZAR
GUWAHATI
ASSAM
PIN- 781001
4:ASSAM RERA AUTHORITY

REP. BY THE TOWN PLANNER OF GUWAHATI

GMDA

3RD FLOOR

STATFED BUILDING

GMC HOSPITAL ROAD

BHANGAGARH

GUWAHATI

ASSAM

PIN- 781005

5: MUKESH CHOKHANI

AGRIM INFRAPROJECT PVT LTD

2ND FLOOR

ADITYA PLAZA

GS ROAD

CHRISTIAN BASTI

GUWAHATI- 781005

6: AGRIM INFRAPROJECT PRIVATE LIMITED

REPRESENTED BY ITS DIRECTOR

A COMPANY HAVING ITS REGISTERED OFFICE AT 2ND FLOOR

ADITYA PLAZA

G.S. ROAD

CHRISTIAN BASTI

GUWAHATI- 781005

ASSAM.

Advocate for : MR K CHOUDHURY

Advocate for : GA

ASSAM appearing for THE STATE OF ASSAM AND 4 ORS

Linked Case : WP(C)/2586/2020

NITUL KUMAR HALOI

S/O- DR BHUPENDRA HALOI

AGRIM VISTA APARTMENT

BLOCK VI- 1D

DHARAPUR

GUWAHATI- 781014

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ASSAM.

Advocate for the Petitioners : Mr. S. P. Sarma, Advocate
Advocate for the Respondents : Mr. N. Goswami, Govt. Advocate
Ms. S. Chutia, Advocate
Mr. P. C. Biswas, Advocate

BEFORE

HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 24.05.2023

Date of Judgment : 24.05.2023

JUDGMENT AND ORDER (ORAL)

Heard Mr. S. P. Sarma, the learned counsel appearing on behalf of the petitioners in both the writ petitions and Mr. N. Goswami, the learned Government Advocate appearing on behalf of the respondent Nos.1 & 3 as well as Ms. S. Chutia, the learned counsel appearing on behalf of the respondent No.2. None appears on behalf of the respondent No.4. Also heard Mr. P. C. Biswas, the learned counsel appearing on behalf of the respondent Nos.5 & 6.

2. Both the writ petitions are taken up for disposal by this common judgment and order taking into account the factual semblance as well as the legal points being similar.

3. It appears from the perusal of the writ petitions that the petitioners in both the writ petitions had booked flats in Agrim Vista-Block-VI and entered into registered agreement for sale with the respondent No.5, who is one of the Directors of the respondent No.6. It has been stated in the writ petitions that the petitioners were issued the letters of possession and in the said letters of possession, the petitioners were instructed to complete some milestone activities before handing over the possession of the flats. Amongst those activities, one of such activity amounts to registration of the apartment.

4. It is the further case of the petitioners that the petitioners have made all payments to the respondent No.5 for peaceful handover of the possession of the flats. The possession of

the flats were also handed over to the petitioners. But there are certain grievances of the various flat owners including the petitioners on the ground of non-registration of the sale deeds, formation of the society, opening of the exit gate and non-construction of various particulars as mentioned in Schedule-C to the Agreements for sale.

5. It has also been mentioned that there were series of meetings between the various residents of the flats sold by the respondent No.6 with the respondent No.5. There were certain promises made by the respondent No.5. But such promises were not kept. On the ground that the said promises were not kept, the petitioners along with other residents of the apartment in question, submitted representation to the Public Grievances Redressal Officer, GMDA, Guwahati on 27.08.2019 seeking an enquiry upon the respondent No.6 by the said authority on account of illegal constructions.

6. A perusal of the said representation dated 27.08.2019 shows the details in respect to which the petitioners along with the other residents have alleged illegal constructions. The were:- (i) exit gate has been blocked by making of a barricade; (ii) children's play area and basket ball court was not constructed according to the GMDA approved plan; (iii) children's park area has been converted into parking spaces which was not there in the original plan and (iv) entry gate has 90° curved which is not in accordance with the original plan.

7. In addition to the said representation, the petitioners along with other residents also submitted a representation before the Deputy Commissioner, Kamrup (M) requesting for an update on the status of the sale permission and the related matters. In the said representation, it was stated that more than 70% of the flats have been sold to different owners by the respondent No.6, and as such, the residents of the said flats have a legal and lawful right to form a society of their own. However, the respondent No.6 had not relinquished its right and also not provided the detail documents which are required to form a Cooperative Society. It was also alleged in the said representation that no papers as regard the occupancy certificate have been provided by the respondent Nos.5 & 6.

8. It further appears on the basis of the said representation, a letter dated 21.12.2019 was issued by the Branch Officer, Land Settlement Branch to the Circle Officer, Azara Revenue

Circle whereby the Circle Officer, Azara Revenue Circle was requested to give an update as regard the status of the sale permission and related matters. The Circle Officer, Azara Revenue Circle was also request to cause an enquiry to the matter and submit a report at the earliest to take further necessary action.

9. It further appears from the perusal of the writ petitions that the petitioners had also submitted a complaint to the Regulatory Authority under Section 31 of the Real Estate (Regulation & Development) Act, 2016.

10. It is, therefore, the case of the petitioners that as the representations so submitted before the authority concerned, i.e. the respondent No.2, i.e. the Guwahati Metropolitan Development Authority; the respondent No.3, i.e. the Deputy Commissioner, Kamrup (M) as well as the Assam RERA Authority, i.e. the respondent No.4 were no considered by the said authorities, the present writ petitions were filed with the prayer directing the respondent authorities, more particularly the respondent Nos.2, 3 & 4 for consideration of the representations made by the petitioners; for a direction upon the respondent No.2 to take appropriate action for compliance of the construction of Agrim Vista Project of the respondent No.5 as per the master plan; for a direction upon the respondent No.3, i.e. the Deputy Commissioner, Kamrup (M) to grant the sale permission to the petitioners so that the sale deed can be registered as well as for a direction to the respondent No.4, i.e. the Assam RERA Authority for taking cognizance of the complaint made by the petitioners and to dispose the same as expeditiously as possible.

11. Both the writ petitions were filed on 11.06.2020. It is relevant to take note of that at that relevant point of time, the whole country was under various lockdowns on account of COVID-19 restrictions issued by the Revenue and Disaster Management as well as the Ministry of Home, Government of India.

12. It appears on record that this Court vide an order dated 25.06.2020 issued notice. This Court further directed in the said order that in the meantime pending notice, the respondent No.2, i.e. GMDA and the respondent No.3, i.e. the Deputy Commissioner, Kamrup (M) would look into the grievances of the petitioners in both the writ petitions as highlighted in

their respective writ petitions so that the exit gate is properly maintained/opened and kept in a workable condition to deal with in any emergency situation which may arise in near future.

13. Taking into account the case of the petitioners and the reliefs sought for, it would be pertinent to take note of that the basic grievance of the petitioners were non-consideration of their representations as submitted to the respondent Nos.2, 3 & 4 and the consequent follow up actions on the basis of the said representations.

14. During the course of hearing, the learned counsel appearing on behalf of the petitioners submitted that the respondent No.4 had duly acted upon their complaint and had passed appropriate orders thereby redressing the grievances of the petitioners.

15. It further appears that the Town Planner of the GMDA had filed an affidavit-in-opposition on 29.01.2021. In paragraph No.6 of the said affidavit-in-opposition it has been mentioned that the respondent No.6, i.e. the builder has submitted proposal for issuance of part Occupancy Certificate for residential 7 (seven) numbers blocks which were under process. As regard the complaint lodged by the petitioners against the respondent No.6, the issue of closing of exit was under consideration of the part occupancy proposal. It was mentioned that in the built drawing for occupancy proposal, the entry and exit of the site were shown but as per site observation, the exit was blocked by the builder. It was also mentioned that there is a provision of opening the exit. The commercial block is in between the entry and exit, which had not started yet. It was further stated that in the original approved site plan, the open space between the Block V and VI was shown as garden area. But as per submitted built drawing for occupancy proposal, this open space was shown as badminton court area, children play area, half basket ball court area and also a swimming pool at the terrace floor of Block-VI. It was further mentioned that there was a site visit on the basis of which the following deviations were noted:

- a) Total excess (deviated) area in floors: 368.10 Sq. M (Block VII)
- b) Parking deviation (Block I to Block VII)

i) Stilt Parking= 101 Nos. (approved)

Stilt Parking = 95 Nos. (maintained)

Deviation= 06 Nos.

ii) Open Parking= 204 Nos. (approved)

Open parking: = 146 Nos. (maintained)

Deviation= 58 Nos.

Total deviation of parking= 64 Nos.

It was mentioned that the deviations were also observed in the common areas by way of constructions in terraces. However, the process of part occupancy proposal was under consideration and all deviations shall be dealt at the time of disposal of the part occupancy proposals as per the provisions of Building Bye Laws in force.

16. It is further relevant that an additional affidavit was filed by the petitioner in WP(C) No.2585/2020 on 18.08.2021. To the said additional affidavit various documents were enclosed. Annexure-1 to the said additional affidavit was a communication issued by the Chief Executive Officer of the respondent No.2 thereby directing the respondent No.5 to ensure that the exit gate is properly maintained/opened and kept in workable condition to deal with in any emergency situation which may arise in future. It further appears from the Annexure-2 to the additional affidavit that on 02.02.2021, the Field Officer, Azara Revenue Circle had issued a communication to the Circle Officer, Azara Revenue Circle. It was informed that there is an urgent need to dismantle the brick wall, Dyna roof and other materials which have blocked the exit gate of Agrim Vista under Azara Revenue Circle through the Disaster Management Act, 2005, Section 30 (2) (xxiii). It appears further from a perusal of Annexure-3 that the Circle Officer, Azara Revenue Circle issued a communication dated 08.02.2021 to the Additional Deputy Commissioner & CEO, District Disaster Management Authority whereby the report so submitted by the Field Officer was forwarded and requested for taking necessary action. It would therefore be seen from the affidavit-in-opposition filed by the respondents No.2 as well

as action so taken by the authorities concerned, the petitioners grievances in so far as the respondent No.2 was concerned was duly considered and redressed.

17. Now coming to the third representation which was submitted to the Deputy Commissioner, Kamrup (M). It transpires from the representation that save and except the question NOC to be issued, the Deputy Commissioner cannot be directed to consider any further. As the Deputy Commissioner was represented by Mr. N. Goswami, the learned Government Advocate, this Court put a query upon the said counsel as regards what was the status of the sale permission so applied. Mr. N. Goswami, the learned Government Advocate submitted on instructions that till date the Office of the Deputy Commissioner had not received the application for sale permission which is required to be submitted and sans any application, there is no role of the Office of the Deputy Commissioner for consideration of the grievances of the petitioners' as regards the sale permission.

18. Mr. S. P. Sarma, the learned counsel appearing on behalf of the petitioners submitted that the petitioners have duly paid the entire amount to the respondent Nos.5 & 6 and they were supposed to submit the application. This Court made a specific query upon the learned counsel for the petitioners as to whether he has any knowledge about the filing of application for sale permission in as much as while seeking sale permission there is a requirement also for submitting affidavit and supplying of certain documents by the vendees along with vendor. The learned counsel for the petitioners instead of answering to the said query submitted that it was the responsibility of the respondent Nos.5 & 6 to obtain the permission.

19. This Court further enquired with P. C. Biswas, the learned counsel appearing on behalf of the respondent Nos.5 & 6 as to whether any sale permission were applied for. The learned counsel for the respondent No.5 & 6 submitted that as per his instructions, no permission has been sought for as the petitioners along with other residents are not cooperating with the respondent Nos.5 & 6. It was further submitted that the respondent

Nos.5 & 6 were not adverse to applying for permission or executing the deed of sale in favour of the petitioners. But the petitioners along with some other residents have been resorted to litigations and complaints in order to harass the respondent Nos.5 & 6. The learned counsel appearing on behalf of the respondent Nos.5 & 6 further submitted that if the deed of sale has not been executed on the ground of not applying for permission, it is a dispute between the petitioners along with other residents vis-à-vis the respondent Nos.5 & 6, and as such, the authorities have no role to play in that regard. The learned counsel appearing on behalf of the respondent Nos.5 & 6, however, submitted that the respondent Nos.5 & 6 are willing to execute the deed of sale. However, for obtaining the NOC from the Office of the Deputy Commissioner, the occupancy certificate is required to be submitted and as on date, the said occupancy certificate is yet to be issued by the concerned Respondent Authority for which the sale permission application could not be filed.

20. In the backdrop of the above, this Court finds it relevant to take note of Section 21A of the Registration Act, 1908 which is applicable in Assam in view of the Registration (Assam Amendment) Act, 2009. The said provision as it stood in the year 2009 when it was brought into force is quoted herein below:-

“21A. Notwithstanding anything contained in any other provision of this Act, no non - testamentary instrument relating to immovable property shall be accepted for registration, unless the Deputy Commissioner of the concerned district issues a No Objection Certificate containing the description of such immovable property to be transferred and also such other No Objection Certificates, which are required to be issued by the Deputy Commissioner or any other Authority under any law for the time being in force or under any Executive Instruction, Order etc. issued by the State Government from time to time;

Provided that all such No Objection Certificates shall be issued within a period of thirty days from the date of the receipt of application and in case No Objection Certificate is not issued within the stipulated period of thirty days, a speaking order with reasons thereof shall be issued to the applicant within the said stipulated period.”

21. From a perusal of the said provision, it is apparent that notwithstanding anything contained in any other provision of the Registration Act, 1908 no non - testamentary

instrument relating to immovable property shall be accepted for registration, unless the Deputy Commissioner of the concerned district issues a No Objection Certificate containing the description of such immovable property to be transferred and also such other No Objection Certificates, which are required to be issued by the Deputy Commissioner or any other Authority under any law for the time being in force or under any Executive Instruction, Order etc. issued by the State Government. The proviso to the said Section makes it clear that No Objection Certificates shall have to be issued within a period of thirty days from the date of the receipt of application, and in case, No Objection Certificate is not issued within the stipulated period of thirty days, a speaking order with reasons thereof shall be issued to the applicant within the said stipulated period.

22. It is further relevant to take note of that 21A of the Registration Act, 1908 was amended by Registration (Assam Amendment) Act, 2021 which received the assent of the President of India on 15.02.2022. The said amending Act of 2021, being relevant, is quoted herein under:-

ASSAM ACT NO. 1 OF 2022
(Received the assent of the President on 15th February, 2022)
THE REGISTRATION (ASSAM AMENDMENT) ACT, 2021
AN

ACT

further to amend the Registration Act, 1908 in its application to the State of Assam.

Whereas it is expedient further to amend the Registration Act, 1908, hereinafter referred to as the principal Act, in its application to the State of Assam;

It is hereby enacted in the Seventy-second-Year of the Republic of India as follows:

1. (1) *This Act may be called the Registration (Assam Amendment) Act, 2021.*

(2) *It extends to the whole of Assam.*

(3) *It shall come into force at once.*

2. *In the principal Act, in third line, in between the words “immovable property” and “shall be” the following shall be inserted, namely:-*

“except for house, flat, residential apartment, commercial building or any construction or structure erected on a plot of land”.

23. A perusal of the Section 2 of the amending Act of 2021 would reveal that house, flat, residential apartment, commercial building or any construction or structure erected on a plot of land was brought outside the purview of Section 21A of the Registration Act, 1908 in so far as it was applicable for the State of Assam. It would further be seen that the said Amending Act was brought into force on 24.02.2022, and as such, w.e.f. 24.02.2022, there was no requirement for obtaining NOC as was otherwise required in terms with Section 21A of the Registration Act, prior to the said amendment.

24. The learned counsel appearing on behalf of the respondent Nos.1 & 3 submitted that pursuant to the Amending Act of 2021, the Assam State Legislative Assembly in its Monsoon Session had passed the Registration (Assam Amendment) Act, 2022. However, as it the requirement of law that such Amending Act can only come into force after receiving the Presidential assent, a notification was issued on 06.12.2022 framing Standard Operating Procedure. The said communication dated 06.12.2022 was placed before this Court. A perusal of the said notification reveals that the said notification issued to bring clarity to Section 21A of the Registration (Assam Amendment) Act, 2021 wherein the mandatory requirement of No Objection Certificate (NOC) was done away with in respect to registration of house, flat, residential apartment, commercial building or any construction or structure erected on a plot of land and to facilitate expeditious registration process. The said notification further stipulates that in respect to the following properties, NOCs are not required, i.e.:-

a. No Objection Certificate from the concerned Deputy Commissioner of the District shall not be required for registration of the non-testamentary instruments for lease or transfer of apartments of real estate projects which have been duly registered with the Real Estate Regulatory Authority established under the Real Estate (Regulation and Development) Act, 2016 and occupancy certificate is issued from concerned local authority.

b. Furthermore, no such No Objection Certificate from the concerned Deputy Commissioner of

the District shall be required for registration of the non-testamentary instruments of lease or transfer of apartment that are not required to register with Real Estate Regulatory Authority established under the Real Estate (Regulation and Development) Act, 2016, in any planning area, for which permission for the construction as per the sanctioned plan and occupancy certificate is duly issued by the concerned local authority.

c. Furthermore, no such No Objection Certificate from the concerned Deputy Commissioner of the District shall be required for registration of the non-testamentary instruments of lease or transfer on resale of apartments, in any planning area, for which No Objection Certificate from the concerned Deputy Commissioner of the District has been issued in the past and there has been no change in land and structure respectively.

25. It, however, may be mentioned that except the above category of instruments, the NOC from the jurisdictional Deputy Commissioner shall be required invariably before the registration. A perusal of the said notification so issued dated 06.12.2022 which is in the form of an executive instruction, in the opinion of this Court overrides the provision of Section 21A as it stood pursuant w.e.f. 24.02.2022 in terms with the Amending Act of 2021. It is no longer *res integra* that by way of an executive instruction, a statutory provision cannot be overridden. In this regard, this Court finds it relevant to take note of the judgment of the Supreme Court in the case of *State of Orissa vs. Prasana Kumar Sahoo*, reported in (2007) 15 SCC 129. Paragraph No.12 of the said judgment is quoted herein below:-

“12. Even a policy decision taken by the State in exercise of its jurisdiction under Article 162 of the Constitution of India would be subservient to the recruitment rules framed by the State either in terms of a legislative Act or the proviso appended to Article 309 of the Constitution of India. A purported policy decision issued by way of an executive instruction cannot override the statute or statutory rules far less the constitutional provisions.”

26. This Court further finds it relevant to take note of the judgment of the Division Bench of this Court in the case of Abdul vs Aziz vs. State of Assam and Others, reported in (2008) 1 GLR 306 wherein the Division Bench clearly held that by way of an Executive Instructions the insistence of the No Objection Certificate was not in consonance with provisions of the Registration Act, 1908. Paragraph Nos.14 to 16 of the

said judgment are quoted herein below:-

“14. It appears from the provisions of the Act as well as the submissions made that the requirement of obtaining a No Objection Certificate prior to the registration of sale deed, is not in consonance with the provisions of the Registration Act. The said requirement has been introduced by the Government of Assam through executive instructions and it is specifically averred in the counter affidavit filed on behalf of the State that necessary amendments in the Registration Act are being contemplated, to take care of the requirement of obtaining of No Objection Certificate, which is being insisted upon in larger public interest.

15. From above, it is apparent that the State Government is also aware that the impugned requirement is not supported by the Registration Act and the Government is presently contemplating amendment exercise in the Registration Act, to ensure statutory support for the already enforced requirement. Therefore, it is obvious that as on date, the said statutory support is not available. Under such circumstances, we hold that such insistence on obtaining of No Objection Certificate prior to registration of sale deeds is not legally sustainable. Accordingly, it is declared that the Registering Authorities under the Registration Act cannot be compelled to insist on No Objection Certificates prior to registration of sale deeds since such insistence is contrary to the provisions of the Registration Act. Once a particular deed fulfils the requirement of the provisions of the Registration Act, further impediment cannot be imposed on registration of such deeds though executive fiat by insistence on No Objection Certificates.

16. In view of above, this petition stands allowed and the respondent authorities are directed to act strictly in terms of the provisions of the Registration Act with regard to registration of deeds and documents. No registration is to be refused for documents which fulfill the requirements of the Registration Act by further insisting on No Objection Certificates, without necessary amendment of the law to lend legal support for such additional requirement. No costs.”

27. Therefore, unless and until there is an Ordinance in terms with Article 213 of the Constitution or the proposed Registration (Assam Amendment) Act, 2022 receives the assent of the President and brought into force in the manner required under law, Section 21A as it stands w.e.f. 24.02.2022 in view of the Amendment Act of 2021 shall hold the field.

28. This Court therefore do not find any reason as to why there should be an

impediment upon the respondent Nos.5 & 6 to execute the deed of sale in favour of the petitioners in as much as there is no requirement of NOC from the Office of the Deputy Commissioner pursuant to the Amending Act of 2021 for the purpose of registration of flats. In that view of the matter, the question of issuance of a direction to the Deputy Commissioner to issue NOC does not arise in the facts of the instant case.

29. Taking into account the above that the grievances of the petitioners of non-consideration by the respondent Nos.2 & 4 have been duly redressed by the authorities and as regards the respondents No.3 in view of the discussion and observation made in paragraph No.17 to 28 above, there arises no question of issuance of a writ, direction or order to grant the NOC in view of the Amending Act of 2021, under such circumstances, this Court is not inclined to issue any writ, direction or order in the present writ petitions to the Deputy Commissioner, Kamrup (Metro).

30. Before parting with the records and taking note that the learned counsel appearing on behalf of the respondent Nos.5 & 6, upon instructions submitted that the respondent Nos.5 & 6 have no issue in executing the deed of sale in favour of the petitioners, it is hoped and expected that the respondent Nos.5 & 6 shall execute the deed of sale in favour of the petitioners.

31. It is, however, observed that if the respondent Nos.5 & 6 do not execute the deed of sale, the petitioners can take recourse to such remedies as available under the law.

32. With the above observations and directions, the writ petitions stand disposed of.

JUDGE

Comparing Assistant