

GAHC010087842023



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

Case No. : WP(C)/2222/2023

MINA SHARMA
WIFE OF MR. RAJU SHARMA,
RESIDENT OF SARUPATHAR TOWN
(WARD NO. 7), P.S.- SARUPATHAR,
DIST- GOLAGHAT, ASSAM,
PIN- 785601.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED THROUGH THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM,
URBAN DEVELOPMENT DEPARTMENT,
DISPUR, GUWAHATI- 781006.

2:THE SARUPATHAR MUNICIPAL BOARD
DHANSIRI
SARUPATHAR

GOLAGHAT
ASSAM
PIN- 785601.

3:THE CHAIRMAN
SARUPATHAR MUNICIPAL BOARD

DHANSIRI
SARUPATHAR

GOLAGHAT
ASSAM

PIN- 785601.

4:THE VICE-CHAIRMAN
SARUPATHAR MUNICIPAL BOARD

DHANSIRI
SARUPATHAR

GOLAGHAT
ASSAM

PIN- 785601

Advocate for the Petitioner : MR. W SHARMA

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 28.06.2023

Heard Mr. A.K. Sahewalla, learned counsel for the petitioner and Mr. M. Chetia, learned Govt. Advocate, Assam, representing respondent no. 1 and Mr. J.K. Goswami, learned counsel for the Sarupathar Municipal Board, representing respondent nos. 2 to 4.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has assailed the notice no. SMB/04/99-2000/46 dated 13.03.2023, by which the petitioner was asked to stop construction. From the contents of the said notice, it is not in dispute that the petitioner was carrying out construction on the basis of building permission. The contents of the said notice is extracted below:-

“Sir,

Regarding the afore mentioned subject and reference, you are informed that

even though you are given building permission vide the above referred construction permission, you are required to stop construction work immediately in view of special instruction received and you are asked to contact the office of the municipal board."

3. The learned counsel for the respondent nos. 2 to 4 had referred to the affidavit-in-opposition filed by the said respondents and had submitted that in the eastern boundary of the house of petitioner is the Langthajan stream, which is a sub-tributary of river Doyang and that the petitioner's construction was encroaching upon the said water body for which the construction was stopped. It was submitted that the petitioner was not maintaining requisite rear set-back in the eastern side of the construction.

4. The submission made by the learned counsel for the respondent nos.2 to 4 may be true to his instructions. However, the impugned notice issued to the petitioner does not contain the description of the alleged violation committed by the petitioner while carrying out the construction. It is too well settled principle that the order of the competent authority must contain essential details so as to put the person to notice as to what he/ she has to respond to.

5. It is not in dispute that if the petitioner is carrying on the construction of her building in violation of the building bye-laws or NOC/ permission for construction, the respondent nos. 2 to 4 have every right to stop such construction and/or to demolish the illegal construction. Nonetheless, the respondent nos. 2 to 4 still owes a duty to put the petitioner to notice about alleged violation, if any.

6. Therefore, as the impugned notice, which is quoted herein

before, lacks in material particulars, the Court is inclined to set aside and quash the said impugned notice no. SMB/04/99-2000/46 dated 13.03.2023, issued by the Chairman, Sarupathar Municipal Board.

7. However, it is clarified that this order shall not preclude the right of the respondent nos. 2 to 4 to issue a fresh notice to the petitioner by specifying the nature of violations committed by the petitioner while carrying out the construction of her building and give a reasonable time of 7 (seven) working days to respond. Thereafter, upon consideration of the reply, it would be open to the respondent nos. 2 to 4 to pass an appropriate order as may be deemed fit and proper.

8. Thus, this writ petition stands allowed with liberty to the respondent nos. 2 to 4 as indicated above.

9. The parties are left to bear their own cost.

JUDGE

Comparing Assistant