

GAHC010090232020



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

Case No. : WP(C)/2722/2020

RAM AWATAR GOENKA AND ANR.
S/O- LATE NATHMAL GOENKA, R/O- H NO. 227 KALAPAHAR COLONY
BAZAR, BENOVA NAGAR, P.S- FATSHIL AMBARI, GUWAHATI- 781018,
KAMRUP(M), ASSAM

2: SHYAM SUNDAR GOENKA
S/O- LATE NANAGRAM GOENKA
R/O- H NO. 228 KALAPAHAR COLONY BAZAR
BENOVA NAGAR
P.S- FATASHIL AMBARI
GUWAHATI- 781018
KAMRUP(M)
ASSA

VERSUS

THE GAUHATI MUNICIPAL CORPORATION AND 6 ORS.
REP. BY ITS COMMISSIONER PANBAZAR, GUWAHATI- 01, KAMRUP(M),
ASSAM

2:THE COMMISSIONER
GMC
PANBAZAR
GUWAHATI- 01
KAMRUP(M)
ASSAM

3:MINA KUMARI KAKATI TALUKDAR
W/O- SRI JAGADISH KAKATI ALIAS JAGADISH TALUKDAR
R/O- KALAPAHAR COLONY BAZAR
BENOVA NAGAR
MOUZA- BELTOLA
P.S- FATSHIL AMBARI
GUWAHATI- 781018

DIST- KAMRUP(M)
ASSAM

4:BIMAL DAS
W/O- SRI NIRANJAN DAS
R/O- KALAPAHAR COLONY BAZAR
BENOVA NAGAR
MOUZA- BELTOLA
P.S- FATSHIL AMBARI
GUWAHATI- 781018
DIST- KAMRUP(M)
ASSAM

5:RAJU PATGIRI
W/O- SONARAM PATGIRI
R/O- KALAPAHAR COLONY BAZAR
BENOVA NAGAR
MOUZA- BELTOLA
P.S- FATSHIL AMBARI
GUWAHATI- 781018
DIST- KAMRUP(M)
ASSAM

6:THE GMDA
REP. BY ITS CHIEF EXECUTIVE OFFICER
HAVING ITS OFFICE AT STATFED BUILDING
BHANGAGARH
GUWAHATI- 05

7:THE CEO
GMDA STATFED BUILDING
BHANGAGARH
GUWAHATI- 0

Advocate for the Petitioner : Mr. A. K. Rai, Advocate

Advocate for the Respondents : Mr. N. Deka, Advocate
for respondent Nos.3, 4 & 5.
Mr. S. Bora, SC, GMC

BEFORE

HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 23.08.2023

Date of Judgment : 23.08.2023

JUDGMENT AND ORDER (ORAL)

The instant writ petition has been filed by the petitioners challenging the building permission issued vide NOC No.GPL/BP/16/120/27012016/104/1479 dated 28.10.2016 granted in favour of the respondent Nos.3 to 5.

2. From a perusal of the writ petition, it transpires that a suit was filed by the predecessor-in-interest of the petitioners against the respondent Nos.3, 4 & 5 along with one Smti. Golapi Talukdar. The said suit was registered and numbered as Title Suit No.316/2014. It appears from the record that that a Deed of Compromise was entered into on 31.03.2015 between the predecessor-in-interest of the petitioners with the respondent Nos.3, 4 & 5 along with two others. Although there are various Clauses in the Deed of Compromise, but relevant to take note of Clause Nos.1 & 2 which are reproduced herein under:-

1. That the SECOND PARTIES do hereby agree that they will provide a road/path over the SCHEDULE-B land measuring 14 feet in breath and 123.5 feet in length on the southern boundary of the SCHEDULE-B land and which is specifically described as SCHEDULED land and shown in Map enclosed with this Compromise Deed and coloured with blue colour.

2. That the SCHEDULE-D land will be a common road/path for both the parties hereto and both the parties shall never claim any right, title and interest over the SCHEDULE-D road/path or raise any type of construction over the SCHEDULE-D road/path, except right of users.

3. To the said Deed of Compromise, there is a map. The said Deed of Compromise was subsequently made a decree of the Court on the basis of a joint application filed by the parties in Title Suit No.316/2014. The said compromise decree was passed on 31.03.2015.

4. It further appears from the records that the respondent No.3, 4 & 5 obtained a building permission from the Gauhati Municipal Corporation (GMC) Authority on 28.10.2016 and along with the building permission, there is also an approved building plan. The petitioners herein, subsequently on the basis of an application under RTI Act, 2005, came to learn that in the approved building plan, the common path which was agreed to in the Deed of Compromise was not made a part of the approved building plan, and as such, had submitted

a complaint to the GMC. On the basis of the said complaint so made, the Commissioner, GMC issued a notice under Section 338 of the Gauhati Municipal Corporation Act, 1971 stating inter-alia that the permission for the RCC building, i.e. BF+GF+4th floor was accorded vide NOC No.GPL/BP/16/120/27012016/ 104/1479 dated 28.10.2016. It was mentioned that there was a road within the land of the plot from eastern side to the western side which was not shown in the site plan which amounts to material misrepresentation of facts, and as such, the respondent Nos.3, 4 & 5 were asked to show cause within seven days as to why the said permission accorded should not be revoked as empowered under Section 338 of the GMC Act of 1971 on the ground of material misrepresentation of facts.

5. It is the case of the petitioners that although the Commissioner, GMC had issued show cause notice on 01.02.2018, but the GMC Authorities thereupon did not follow it up and it is under such circumstances, the petitioners have approached this Court for cancellation/revoking of the GMC building permission so accorded to the respondent Nos.3, 4 & 5.

6. It appears from the record that this Court had issued notice on 05.10.2020. In the said order, this Court had observed that any construction made in violation of the construction permission/norms/Rules and Regulations would be subject to further orders that may be passed in the present proceedings.

7. It further reveals from the records that the GMC Authorities had filed an affidavit-in-opposition on 21.01.2021 wherein at paragraph Nos.4, 5, 7 & 8, the GMC Authorities have only mentioned about issuance of the show cause notice on 01.02.2018. Surprisingly, the GMC Authorities are silent as to what action was taken pursuant to the said show cause notice.

8. It further reveals from the records that the respondent Nos.3, 4 & 5 appeared before this Court through their counsel on 25.11.2020. But no affidavit-in-opposition has been filed by the respondent Nos.3, 4 & 5 opposing the case of the petitioners.

9. This Court further finds it relevant to take note of that there is an additional affidavit

filed by the petitioners on 20.05.2022 wherein it was mentioned that after filing of the writ petition, the private respondent Nos.3, 4 & 5 did not continue with the construction activities, but on and from the second week of April, 2022, the respondent Nos.3, 4 & 5 started work of construction, i.e. piling work. Under such circumstances, the petitioners yet again filed another application in terms with RTI Act, 2005 as to whether any revised plan had been approved in the meantime. The Zonal Engineer as well as the Associate Planner, GMC, in reply to the said request made under RTI Act, 2005, informed the petitioners that there had been no revised plan approved.

10. Mr. A. K. Rai, the learned counsel for the petitioners submitted that the respondent Nos.3, 4 & 5 have suppressed the fact that there is a common path on the south of the land of the respondent Nos.3, 4 & 5 and by suppressing this material fact, the respondent Nos.3, 4 & 5 have obtained building permission which is required to be revoked in terms with the provision of GMC Act, 1971 as well as Guwahati Building Construction (Regulation) Act, 2010. The learned counsel for the petitioners further submitted that by issuance of the notice dated 01.02.2018, the Commissioner, GMC had categorically noted that there has been material misrepresentation, but the GMC Authorities remained silent thereafter for the reason best known as could be even seen from the affidavit filed by the respondent Nos.1 & 2 which was filed on 21.01.2021 without stating as to what further action was taken pursuant to the notice dated 01.02.2018. It was the specific submission of the learned counsel for the petitioners that the GMC Act, 1971 as well as the Rules and Bylaws framed therein under casts a statutory duty upon the Official Respondents to take action if there is an infraction to the provisions of law. It was further submitted that the inaction of the Respondent Authorities are apparent on the face of the affidavit so filed by them.

11. Mr. N. Deka, the learned counsel appearing on behalf of the respondent Nos.3, 4 & 5 submitted that perusal of the Deed of Compromise as well as the compromise decree would show that the common path of 14 feet in breadth and 123.9 feet in length which has been specifically described in Schedule-D to the Deed of Compromise would be provided to the predecessor-in-interest of the petitioners. He further submitted that the Deed of

Compromise would also show that no party shall claim any right, title and interest over the Schedule-D road/path or raise any type of construction over the Schedule-D road/path except the right of use as common path/road. Mr. N. Deka, the learned counsel appearing on behalf of the respondent Nos.3, 4 & 5, therefore, submitted that in the instant case, the respondent Nos.3, 4 & 5 are not raising any constructions over the common passage and non-disclosing of the common passage in the site plan would not amount to material misrepresentation. He further submitted that from the photographs enclosed by the petitioners in the writ petition as well as also in the additional affidavit, it would clearly show that the respondent Nos.3, 4 & 5 are not raising any form of construction over the said common passage/road.

12. Mr. S. Bora, the learned counsel appearing on behalf of the GMC submitted that he has only instructions with regard to the issuance of the notice dated 01.02.2018 and thereafter no further instructions have been provided to him.

13. This Court, upon hearing the learned counsels for the parties has put a specific query upon Mr. A. K. Rai, the learned counsel for the petitioners as to how the petitioners would be affected if in the site plan/approved building plan, the common passage is not shown. The learned counsel for the petitioners submitted that the construction which is being carried out is a BF + GF + 4 Floors and there would be third party rights created, if not done till date. The respondent Nos.3, 4 & 5 along with the third party may exert claim over the common passage as the same has been shown as the land of the respondent Nos.3, 4 & 5 which would be contrary to the Deed of Compromise and Compromise Decree. It is, therefore, the submission of Mr. A. K. Rai, the learned counsel for the petitioners that the non-disclosing of the common passage in the site plan/approved building plan may at a future date affect the right of the petitioners over the common passage. The learned counsel for the petitioners further submitted that the common passage/road is the passage for the ingress and egress to the petitioners' land. In future, if the petitioners propose to demolish the present structure and construct a new building, it would be difficult to obtain permission if the said common passage is not shown in the approved building plan.

14. Mr. N. Deka, the learned counsel appearing on behalf of the respondent Nos.3, 4 & 5 however submitted that in view of the Deed of Compromise and compromise decree, the respondent Nos.3, 4 & 5 would not raise any construction or claim any absolute right over the Schedule-D plot of land except the common rights as mentioned in the Deed of Compromise. Mr. N. Deka, the learned counsel appearing on behalf of the respondent Nos.3, 4 & 5 submitted that in order to avoid any confusion, the said respondents are not adverse to submitting a revised building plan showing the common passage in a more clear and distinct manner, though as per him, the common passage has been shown in the building plan.

15. Upon hearing the learned counsels for the parties and taking into account the replies to the queries so made by this Court, this Court is of the opinion that the reasons why the petitioners are aggrieved for not mentioning the common passage and the inaction of the respondent GMC cannot be said to be without any basis or unjustified. It is the opinion of this Court that if the common passage is not shown in the approved building plan, the respondent Nos.3, 4 & 5 or third party upon whom rights may be created, may at the later stage claim rights over the common passage as a part of the land of the respondent Nos.3, 4 & 5. The further apprehension of the petitioners is that if the said common passage is not shown in the approved plan, then at a later stage if the petitioners want to demolish their existing building and reconstruct, it would be difficult on the part of the petitioners to obtain a building permission is also in the opinion of this Court a justified apprehension which if not dealt with at this stage, may result in unnecessary complications.

16. In the opinion of this Court, the grievances and corresponding rights amongst the parties can be balanced by passing appropriate directions which are as under:-

(i) The respondent Nos.3, 4 & 5 are given the liberty to submit a revised building plan within 90 (ninety) days from today thereby clearly indicating the common passage of 14 feet in breadth and 123.9 feet in length in the southern boundary of their land.

(ii) However, it is observed that if the Respondent Nos.3, 4 & 5 fail to submit the

revised approved building plan within the time stipulated hereinabove, the Commissioner, GMC is directed to take appropriate steps in terms with the notice dated 01.02.2018 and bring to a logical conclusion the said proceedings within another 60 (sixty) days thereafter by taking note of the Deed of Compromise, the Compromise Decree dated 31.03.2015, the observation made hereinabove and the provisions of the GMC Act, 1971 and the Rules framed thereunder.

(iii) The petitioners are directed to serve a certified copy of the instant judgment and order to the respondent No.2 for due compliance.

17. In view of the above observations and directions, the instant petition stands disposed of.

JUDGE

Comparing Assistant