

GAHC010099442022



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

Case No. : WP(C)/3519/2022

MD. NEKIBUL HUSSAIN CHOUDHURY
S/O- LATE AHMED HUSSAIN
R/O-HEDAYETPUR, HOUSE NO-63
P.D CHALIHA ROAD, GUWAHATI
P.O- SILPUKHURI
P.S- LATASIL
DIST- KAMRUP(M), ASSAM
PIN-781003

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER TO THE GOVT. OF ASSAM,
MUNICIPAL CORPORATION, DISPUR, GUWAHATI-06

2:THE COMMISSIONER
GAUHATI MUNICIPAL CORPORATION
PANBAZAR
GUWAHATI-781001

3:THE CHIEF EXECUTIVE OFFICER
GUWAHATI METROPOLITAN DEVELOPMENT AUTHORITY (GMDA)
BHANGAGARH
GUWAHATI-05

4:THE ASSOCIATE PLANNER
GAUHATI MUNICIPAL CORPORATION
PANBAZAR
GUWAHATI-781001

5:KUTUBUDDIN AHMED
S/O- LATE SIRAJUDDIN AHMED
R/O- HOUSE NO. 62
R/O-HEDAYETPUR

P.D CHALIHA ROAD
GUWAHATI
P.O- SILPUKHURI
P.S- LATASIL
DIST- KAMRUP(M)
ASSAM
PIN-78100

Advocate for the Petitioner : MRS. R CHETRI

Advocate for the Respondent : SC, GMC

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 20-12-2023

Heard Ms. R. Begum, learned counsel for the petitioner; Mr. N. Goswami, learned Junior Government Advocate, Assam for the respondent no. 1; and Mr. P. Nayak, learned Standing Counsel, GMC & GMDA for the respondent nos. 2, 3 & 4; and Mr. N.N. Jha, learned counsel for the respondent no. 5.

2. As per the case projected in this writ petition, preferred under Article 226 of the Constitution of India, the petitioner and his family have been residing in a plot of land, measuring 5 Lessas, covered by Dag no. 368 & Patta no. 105, situate at Village – Sahar Sarania, Part – I, Mouza – Ulubari, Guwahati Revenue Circle, District – Kamrup [Metro], which has been mutated in their names, since long. The respondent no. 5 stays in a plot of land, adjacent to the plot of land of the petitioner. Both the petitioner and the respondent no. 5 are using the same approach road for ingress and egress to their respective residences.

3. When the respondent no. 5 started constructing a RCC building in his plot of land from February, 2022, it was noticed that the wall and the roof plinth of the under construction RCC building stood extended to the edge of the boundary of the plot of land of the petitioner, thereby, leaving no gap between the house and boundary wall and as a result, water/rainwater from the upper floors of the building constructed by the respondent no. 5

had the possibility of falling beyond boundary wall and inside the plot of land of the petitioner. The petitioner stated to have lodged a complaint before the respondent no. 2 as well as the respondent no. 3. It has been stated that when no effective steps were found to have been taken by any of the said two authorities, the petitioner has been constrained to institute present writ petition.

4. Mr. Jha, learned counsel, who has appeared for the respondent no. 5 has placed a copy of an Order bearing no. GMDA/UC/122/2021/51 dated 01.03.2023 issued by the respondent no. 3, to submit that the respondent no. 5 was already served with a notice dated 21.07.2023 under Section 88 of the Guwahati Metropolitan Development Authority [GMDA] Act, 1985, whereby, he was asked to show cause as to why the deviated portion of the RCC building constructed by him should not be dismantled, due to deviations made from the approved drawing and the NOC dated 07.08.2006 issued by the respondent GMDA. The deviations found in constructing the RCC building were also reflected in the notice.

5. The Order dated 01.03.2023 has further revealed that when the respondent no. 5 submitted a Reply on 09.02.2023 in response to the notice under Section 88 of the GMDA Act, 1985, the same was examined and after examination, the same was rejected, affirming the observations made in the notice dated 21.07.2023 for removal of the unauthorised part of the construction. By the Order dated 01.03.2023, the respondent no. 7 has already been directed to demolish the unauthorised portion of the building, constructed in violation of the provisions of the approved building permission and Building Bye-Laws, within a period of 10 [ten] days from the date of receipt of the order dated 01.03.2023, failing which the GMDA authorities would proceed with the demolition of the unauthorised part of the construction or would seal the premises of unauthorised construction.

6. It is submitted at the Bar by Mr. Jha, learned counsel for the respondent no. 5 that against the Order dated 01.03.2023, the respondent no. 5 has preferred an appeal before the appellate authority, that is, the District Judge, Kamrup [Metro] as per the provisions of the GMDA Act, 1985. On preferring the appeal, the appeal has been registered as Misc. Appeal no. no. 5/2023 and presently, the said appeal is pending before the Additional District Judge

no. 5, Kamrup [Metro]. Mr. Jha has further submitted that the petitioner herein is a respondent in the said appeal and has already started participating in the proceedings of Misc. Appeal no. no. 5/2023. The fact that the petitioner herein is respondent in the pending appeal, Misc. Appeal no. no. 5/2023 and has been participating in the proceedings before the learned Additional District Judge no. 5, Kamrup [Metro], have not been disputed by the Ms. Begum, learned counsel for the petitioner.

7. As the complaint of the petitioner regarding unauthorised construction of the RCC building on the part of the respondent no. 5 has already resulted into the Order dated 01.03.2023 of the respondent no. 3, no cause of action appears to have survived for the writ petitioner to continue with the present writ proceedings. As the Order dated 01.03.2023 whereby the respondent no. 5 has been directed to demolish the unauthorised portion of the RCC building has been at the stage of appeal as on date, before the appellate forum, the remedy of the petitioner lies in participation in the ongoing appellate proceedings, presently pending before the appellate forum of learned Additional District Judge no. 5, Kamrup [Metro]. Since the petitioner has already started participating the said appellate proceedings, this writ proceeding is found to be a parallel proceedings, which cannot be allowed to be proceeded simultaneously with the appellate proceedings. Accordingly, this writ petition is closed reserving the liberty to the petitioner to agitate all his points regarding unauthorised construction of the RCC building before the appellate forum.

JUDGE

Comparing Assistant