

GAHC010118262023



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

Case No. : WP(C)/3218/2023

NEVA PRASAD YADAV
S/O- LATE NAGINA RAY, R/O- PREMODA BHAWAN, HOUSE NO. 8C, 2ND
FLOOR, A.K. AZAD ROAD, P.O. REHABARI, P.S. PALTANBAZAR,
GUWAHATI-08, DIST. KAMRUP(M), ASSAM

VERSUS

THE STATE OF ASSAM AND 7 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, GUWAHATI DEVELOPMENT DEPARTMENT,
DISPUR, GUWAHATI-06, ASSAM

2:THE GUWAHATI MUNICIPAL CORPORATION
GUWAHATI CITY
REPRESENTED BY ITS COMMISSIONER
BHANGAGARH
GUWAHATI
DIST. KAMRUP (METROPOLITAN)
ASSAM

3:GUWAHATI METROPOLITAN DEVELOPMENT AUTHORITY
REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER
3RD FLOOR STATFED BUILDING
GMCH ROAD
BHANGAGARH
GUWAHATI-781005
ASSAM

4:THE DEPUTY COMMISSIONER DISTRICT
KAMRUP METROPOLITAN
LICHUBAGAN
HENGRABARI

GUWAHATI-781036
ASSAM

5:THE CIRCLE OFFICER
GUWAHATI REVENUE CIRCLE
DR. B.K. KAKATI ROAD
ULUBARI
GUWAHATI
KAMRUP(M)-781007
ASSAM

6:THE COMMISSIONER OF POLICE
GUWAHATI METRO CITY
PANBAZAR
GUWAHATI-781001
ASSAM

7:M/S. PRATIK INFRACON PVT. LTD.

A COMPANY REGISTERED UNDER THE COMPANIES ACT
1956 HAVING ITS HEAD OFFICE AT 2ND FLOOR
RAJDEEP COMPLEX
F.A. ROAD
KUMARPARA
GUWAHATI-1
KAMRUP(M)
ASSAM
PRESENTLY HAVING ITS OFFICE AT HOUSE NO. 50
2ND FLOOR
UDAYPUR BYLANE NO. 1
R.K. MISSION ROAD (MAIN ROAD)
BIRUBARI
GUWAHATI-781016
KAMRUP (METROPOLITAN)
ASSAM AND IS REPRESENTED BY ITS DIRECTOR
SMT. SARITA AGARWAL.

8:SMT. SARITA AGARWAL
W/O- PAWAN KUMAR AGARWAL
DIRECTOR
M/S. PRATIK INFRACON PVT. LTD.
R/O- HOUSE NO. 50
2ND FLOOR
UDAYPUR BYLANE NO. 1
R.K. MISSION ROAD (MAIN ROAD)
BIRUBARI
GUWAHATI-781016
KAMRUP (METROPOLITAN)

ASSA

Advocate for the Petitioner : MR. S P ROY

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 09.06.2023

Heard Mr. S.P. Roy, learned counsel for the petitioner. Also heard Mr. N. Goswami, learned Govt. Advocate, representing respondent no. 1 and 4 to 6, Mr. S. Bora, learned standing counsel for the GMC and GMDA, representing respondent no. 2 and 3.

2. In view of the nature of order proposed to be passed, issuance of notice on private respondent nos. 7 and 8 is dispensed with.

3. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has prayed for (i) directing the respondents to demolish the house constructed by respondent nos. 7 and 8 over the land of the petitioners, and (ii) to quash the agenda note dated nil for Mayor-in-Council.

4. In brief, the case of the petitioner is that pursuant to an agreement and power of attorney, the respondent nos. 7 and 8 had carried out construction of a Ground and three storied building on the land of the petitioner. It is projected that contrary to the terms of the agreement, the respondent nos. 7 and 8 carried out the construction on the strength of the permission obtained by the petitioner instead of obtaining permission in the name of respondent no. 7 company. It is also alleged that the construction was sub-standard and in

violation of the applicable building bye-laws. It is projected that the GMC authorities had earlier proposed to levy penalty on the deviation, but subsequently, issued a notice dated 02.06.2017 under Sections 337(1) and 337(2) of the GMC Act, 1971, which was followed by demolition notice dated 19.08.2017, issued under Section 337(3) of the GMC Act, 1971 in respect of construction on fourth floor. It is projected that although the NOC was for upto two floors, in the impugned undated agenda note to the Mayor-in-Council of GMC contains false information that the Ground + three floor construction was carried out as per NOC dated 03.12.2011. It is also projected that although the dispute between the parties was referred to arbitration, which had culminated in an award dated 15.12.2021, the respondent nos. 7 and 8 did not comply with the said award. Accordingly, by extensively referring to the contents of the writ petition, the learned counsel for the petitioner has prayed for demolishing unauthorised construction.

5. In support of his submissions, the learned counsel for the petitioner has placed reliance on the following cases, viz., (i) *Supertech Ltd. v. Emerald Court Owner Resident Welfare Association & Ors.*, (2021) 10 SCC 1, (ii) *Mahendra Baburao Mahadik v. Subhash Krishna Kanitkar*, (2005) 4 SCC 99, (iii) (1992) 2 GLJ 217 (citation not found), and (iv) *Smt. Banasri Mondal v. State of West Bengal & Ors.*, WPA 740/2021, decided on 15.02.2021.

6. On a perusal of the materials available on record, it is evident from the sequence of events narrated herein after that this writ petition is sought to be used as leverage by the petitioner to carry out his personal quarrel with the respondent nos. 7 and 8.

7. On 03.12.2011, the petitioner had obtained a NOC from GMC to carry out construction of RCC building on his land. Thereafter, on 11.01.2012,

the petitioner had entered into a Memorandum of Agreement (MoA for short) allowing the said respondent no. 7 to carry out development/construction over his land, which entitled the petitioner of two flat units. Although under Clause 4.2 of the MoA, there is a provision to enable the respondent no. 7 to obtain sanctioned plan, but the learned counsel for the petitioner could not show that any express prohibition in the MoA against the respondent no. 7 to carry out construction as per NOC obtained by the petitioner.

8. It appears from the list of dates filed by the petitioner he had been given possession notice of his allotted flats on 11.12.2014. After receipt of possession of the flats, the petitioner then issued notice to the respondent nos. 7 and 8 regarding breach of agreement, which was followed by advocate's notice dated 07.01.2015, raising certain demands. Thereafter, in terms of arbitration clause contained in the MoA, an arbitration proceeding was instituted, which culminated in an award dated 15.12.2021. Thereafter, the petitioner entered into a MoU dated 17.11.2021 with the respondent no. 8. In clause 4 of the said MoU it was provided that as per their compromise, both parties would withdraw their respective objections before GMC, GMDA, APDCL, Law enforcing agencies, etc. This was followed by Supplementary MoU dated 15.12.2021 between the petitioner and respondent no. 8. Thereafter, an agreement for sale was executed on 17.01.2022 by the petitioner in favour of the husband of respondent no. 8 in respect of two flat units situated on the first floor of the building with proportionate share of the land. Thereafter, the petitioner issued advocate's notice to the respondent nos. 7 and 8 on 12.05.2022, which was responded to by advocate's reply dated 25.05.2022. This was followed by execution of a sale deed by the petitioner on 12.07.2022 in favour of the husband and son of the respondent no.8. Then the petitioner

again issued notices dated 22.07.2022 and 03.08.2022 to the respondent no. 8 and APDCL, and also to the Circle Officer on 05.08.2022 as objection against the mutation.

9. Thus, from the sequence of events, it is clear that owing to the arbitration clause in the MoA dated 11.01.2012, the petitioner had invoked arbitration clause and an award was passed in the said arbitration proceeding. Then the award was followed by MoU for compromise, which contains clause that objections would be withdrawn. This was followed by sale of flat units at first floor of the building to the family members of the respondent no. 8. This shows that after the arbitration award, followed by compromise in form of MoU, the petitioner has maliciously instituted this writ petition for oblique purpose and to settle personal grudge in disguise of complaint against illegal construction. Even if the construction was illegal, the petitioner had compromised the matter vide MoU dated 15.12.2021 and Supplementary MoU dated 17.01.2022. Therefore, after selling two flat units to the family members of the respondent no. 8, it is not open to the petitioner to challenge the legality of the constructions, as he has given his clear and unambiguous acquiescence by entering into MoU and Supplementary MoU referred above.

10. Therefore, the Court is inclined to hold that this writ petition is nothing but a malicious proceeding, which is aimed to use this Court as a tool to settle his personal vengeance against the respondent nos. 7 and 8.

11. In none of the cases cited by the learned counsel for the petitioner, the facts are similar to the one in this case. It could not be shown that in any of the cited cases, the complainants to illegal construction had got an arbitration award and then compromised it by entering into a MoU and thereafter, the Courts had entertained the dispute regarding illegal construction

raised by such complainants. We are not quarrelling with the well settled principles regarding illegal construction as contained in the decisions cited by the learned counsel for the petitioner. However, in this case, the petitioner has been harping about the allegation of illegal construction whenever it suits him and therefore, using this writ petition as a tool for settling personal vengeance.

12. Hence, for the reasons assigned above, the Court does not find any merit in the case, as the MoA dated 11.01.2012, between the petitioner and respondent no. 7 contains arbitration clause, which was availed by the petitioner. Therefore, the petitioner cannot be permitted to litigate again and again on the same issue. On one hand, if the petitioner had not raised such a dispute before the Arbitrator, this writ petition would be hit by principles of constructive *res judicata*. On the other hand, if the petitioner has raised such an issue, the arbitration award has attained finality.

13. Thus, this writ petition is found to be mala fide, not bona fide and the process of law is being used as a tool by the petitioner to wreck vengeance against the respondent nos. 7 and 8.

14. Hence, this writ petition is dismissed in limine, without issuance of notice on the respondents.

15. It is clarified that the dismissal of this writ petition shall not be a bar for the competent authorities to examine if there is any construction is illegal. The only bar would be to do such examination on complaint made by the petitioner or from persons/ complainants set up by the petitioner and therefore, before proceeding with such enquiry, the bona fide as well as interest of the future complainants must be examined first.

16. As this writ petition is being dismissed in the motion stage, the

Court has refrained from imposing exemplary cost on the petitioner.

17. The Registry shall transmit a downloaded true copy of this order to the respondent nos. 7 and 8.

18. The learned standing counsel for the GMC and GMDA shall also transmit a downloaded copy of this order to the concerned authorities of GMC and GMDA to bring this order to the notice of the said authorities. Similarly, the learned Government Advocate shall also transmit a downloaded copy of this order to the respondent no. 1 to bring the order to the notice of the said authority.

JUDGE

Comparing Assistant