

GAHC010125092017



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

Case No. : WP(C)/1734/2017

DEEPAK SAIKIA
S/O. LT. BAPURAM SAIKIA, R/O. RAMKRISHNA NAGAR, NEAR PANITANKI,
NAGAON, P.O. and P.S. NAGAON, DIST. NAGAON, ASSAM.

VERSUS

THE STATE OF ASSAM and 4 ORS.
REP. BY THE COMM. and SECY. TO THE GOVT. OF ASSAM, MUNICIPAL
ADMINISTRATION DEPTT., DISPUR, GHY.-06.

2:THE DY. COMMISSIONER DUM DIST. COLLECTOR

NAGAON
GUWAHATI.

3:THE CHAIRMAN

NAGAON MUNICIPAL BOARD
NAGAON
P.O. NAGAON
PIN-782001.

4:THE CHAIRMAN
NAGAON DEVELOPMENT AUTHORITY

P.O. NAGAON
PIN-782001.

5:SRI BADAL SHOME

S/O. LT. NIPENDRA CH. SHOME
R/O. RAMKRISHNA NAGAR

NEAR PANITANKI
NAGAON
P.O. and P.S. NAGAON
DIST. NAGAON
ASSAM
PIN-782001

Advocate for the Petitioner : MR.S ALI

Advocate for the Respondent : MR. S C KHOUND

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
ORDER

11.08.2023

The instant writ petition has been filed by the petitioner seeking a direction upon the respondent authorities to restrain the respondent No.5 from constructing a two storied RCC house on the boundary line of the petitioner's land and to demolish the already constructed portion of the house.

2. The fact involved herein is that the land of the respondent No.5 is situated on the southern side of the petitioner's land. It is the allegation of the petitioner that for the construction of an RCC building, it is the requirement as per the provisions of building byelaws that a minimum of 3 feet space has to be kept as an open space as side setback. However, the respondent No.5 had constructed the building keeping only 1 (one) feet space towards the petitioner's side and thereby caused havoc and panic to the petitioner. It is under such circumstances, the petitioner has approached the Nagaon Municipal Board on 03.02.2017 to restrain the

respondent No.5 from constructing the said house on the boundary line of the petitioner's land and also to demolish the already constructed portion of the house. As no action has been taken, the petitioner has approached this Court by filing the instant writ petition.

3. Mr. S. C. Khound, the learned counsel appearing on behalf of the Nagaon Municipal Board submitted that the respondent No.5 has constructed the ground floor after taking due permission from the Nagaon Development Authority, i.e. the respondent No.4. However, the respondent No.5 thereupon raised the first floor in the said RCC construction. He further submitted that upon receiving a complaint from the petitioner, a notice was issued to the respondent No.5 to stop construction. Accordingly, the construction was stopped by the respondent No.5. Mr. S. C. Khound, the learned counsel appearing on behalf of the Nagaon Municipal Board further submitted that if any construction is made without taking the approval from the Nagaon Municipal Board, the said construction would be illegal and the said Board has the power to demolish any illegal construction so carried out.

4. Mr. K. M. Haloi, the learned counsel appearing on behalf of the respondent No.5 submitted that the construction so carried out by the respondent No.5 on the ground floor is within the permissible limit and on the land of the respondent No.5 and that there has been no violation to the permission so granted in respect to the ground floor. As regard the first floor, it was submitted that the respondent No.5, after receipt of the notice from the Nagaon Municipal Board, had stopped construction.

5. Upon hearing the learned counsel for the parties, it shows that there is dispute as regards whether the construction so made by the respondent

No.5 falls on the boundary line of the petitioner. This is the aspect which can be dealt with by the Civil Court or even by the Nagaon Municipal Board and such adjudication cannot be done by this Court in exercise of the powers under Article 226 of the Constitution.

6. Taking into account the above, this Court disposes of the instant writ petition with a direction upon the respondent No.3, i.e. the Chairman, Nagaon Municipal Board to make enquiry as to whether the respondent No.5 had made the constructions in terms with the permission/approval so granted and if not done, then shall take such action as necessary in terms with the provisions of the Assam Municipal Act, 1956 as well as the Building Byelaws framed therein under.

7. The said exercise be completed by the respondent No.3 within 2 (two) months from the date of service of the notice.

8. Before parting, this Court deems it necessary to clarify that if rights as regards the title over the land arises, it shall be the competent Civil Court to decide.

JUDGE

Comparing Assistant