

GAHC010037622019



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

Case No. : WP(C)/1177/2019

HIMANI DAS AND 5 ORS.
W/O. SRI KANAI DAS, R/O. WARD NO.3, SARUPATHAR TOWN, P.O.
SARUPATHAR, P.S. SARUPATHAR, DIST. GOLAGHAT, ASSAM.

2: AJIT DEY
S/O. SRI AKHIL DEY
R/O. KHANIKAR VILLAGE
SARUPATHAR
P.O. SARUPATHAR
P.S. SARUPATHAR
DIST. GOLAGHAT
ASSAM.

3: BIPUL GOGOI
S/O. LT. AKON GOGOI
R/O. KHANIKAR VILL.
SARUPATHAR
P.O. SARUPATHAR
P.S. SARUPATHAR
DIST. GOLAGHAT
ASSAM.

4: SANJAY SAHA
S/O. SRI BHANU SAHA
R/O. WARD NO.2
SARUPATHAR TOWN
P.O. SARUPATHAR
P.S. SARUPATHAR
DIST. GOLAGHAT
ASSAM.

5: BABUL PAUL
S/O. LT. AMULYA PAUL
R/O. KHANIKAR VILL.

SARUPATHAR
P.O. SARUPATHAR
P.S. SARUPATHAR
DIST. GOLAGHAT
ASSAM.

6: DILIP DEKA
S/O. LT. BISWA DEKA
R/O. WARD NO.3
SARUPATHAR TOWN
P.O. SARUPATHAR
P.S. SARUPATHAR
DIST. GOLAGHAT
ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY COMM. AND SECY. TO THE GOVT. OF ASSAM, URBAN
DEVELOPMENT DEPTT., DISPUR, GUWAHATI-06.

2: THE DIRECTOR OF MUNICIPAL ADMINISTRATION
ASSAM
DISPUR
GHY.-06.

3: THE SARUPATHAR MUNICIPAL BOARD
SARUPATHAR
DIST. GOLAGHAT
ASSAM REP. BY ITS CHAIRMAN.

4: THE CHAIRMAN
SARUPATHAR MUNICIPAL BOARD
SARUPATHAR
DIST. GOLAGHAT
ASSAM.

5: THE EXECUTIVE OFFICER
SARUPATHAR MUNICIPAL BOARD
SARUPATHAR
DIST. GOLAGHAT
ASSAM

Advocate for the Petitioner : MR. B BORA

Advocate for the Respondent : GA, ASSAM

Linked Case : Cont.Cas(C)/315/2019

BIPUL GOGOI AND ANR.
S/O LT. AKON GOGOI
R/O KHANIKAR VILLAGE
SARUPATHAR
P.O. SARUPATHAR
DIST.-GOLAGHAT (ASSAM)

2: DILIP DEKA
S/O LT. BISWA DEKA
R/O WARD NO. 3
SARUPATHAR TOWN
P.O.AND P.S.- SARUPATHAR
DIST.-GOLAGHAT (ASSAM)
VERSUS

BIPLOB SHARMA
THE CHAIRMAN
SARUPATHAR MUNICIPAL BOARD
SARUPATHAR
DIST.-GOLAGHAT
ASSAM
PIN-785601

Advocate for : MR. B BORA
Advocate for : MS. H M PHUKAN appearing for BIPLOB SHARMA

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 13-09-2023

Heard Mr. B. Bora, learned counsel for the petitioners in the writ petitioners as well as in the contempt petitioners in Contempt Case[C] no. 315/2019. Also heard Mr. K.K. Parasar, learned counsel for the sole respondent in contempt case, Contempt Case[C] no. 315/2019.

2. The petitioners, 6 in nos., have instituted the writ petition stating that they have a common cause of action. The petitioners have projected that earlier, they were running shops at Sarupathar Daily Market from rooms allotted by the respondent Sarupathar Municipal Board [erstwhile Sarupathar Town Committee]. The Sarupathar Municipal Board allotted those rooms to the petitioners to run their shops by executing agreements on various dates. The petitioners were allotted the Shop no. 95 [new], 90 [new], 60, 79 [new], 69 [new] and 59 [old] respectively on deposit of requisite security money with the respondent Municipal Board before taking possession of their shops.

3. On 06.05.2017, the petitioners were informed by the respondent Municipal Board that one RCC Market Complex would be constructed at the place wherefrom the petitioners were running their business, utilising the funds received from the State Government. By informing so, the petitioners were asked to vacate their shops within a period of 7 [seven] days from 06.05.2017, else appropriate measures would be taken to vacate the same. Agreements were executed by the respondent Municipal Board with the petitioners on different dates wherein the petitioner had agreed to vacate their allotted rooms by 30.05.2017. The agreements had mentioned that on and from 30.05.2017, the respondent Municipal Board authorities would undertake the construction works and on completion of the construction works of the RCC Market Complex, the petitioners would be given allotment of rooms in the newly constructed RCC Market Complex. After execution of the agreements, the petitioner duly vacated their respective allotted rooms for undertaking the construction works of the RCC Market Complex.

4. The petitioners have instituted the writ petition on the premise that when the petitioner approached the Chairman of the respondent Sarupathar Municipal Board for allotment of the rooms in the newly constructed RCC Market Complex after completion of its construction, the Chairman of the respondent Sarupathar Municipal Board demanded a sum of ₹ 2,00,000/- from each of them as security money for allotment of their respective shops. The petitioners have contended that as the amount demanded from each of petitioners was beyond their ability, they asked for exemptions. As the respondent Sarupathar Municipal Board authorities did not pay any heed to the prayers made by the petitioners and informed them by a letter dated 06.02.2019 that their prayers for reduction of the security amount

could not be acceded to and in the event of failure on the part of the petitioner, the rooms in the newly constructed RCC Market Complex would be allotted to the interested persons safeguarding the financial interest of the respondent Sarupathar Municipal Board, the petitioners have approached this Court with the prayer to set aside the letter dated 06.02.2019.

5. When the writ petition was moved on 22.02.2019, it was directed, in the interim, that the respondent Sarupathar Municipal Board shall allow the petitioners to enter into agreements and thereafter, handover possession of the respective rooms to the petitioners in the newly constructed RCC Market Complex, subject to deposit of ₹ 50,000/- by each of the petitioners as security deposit. Alleging violation of the said interim order, the 2 [two] of 6 [six] petitioners in the writ petition, have filed the contempt petition, Contempt Petition[C] no. 315/2019.

6. In the contempt petition, the Chairman of Sarupathar Municipal Board was impleaded as the sole respondent. When notice was issued to the sole respondent by order dated 07.06.2019, the sole respondent i.e. the Chairman of the Sarupathar Municipal Board filed an affidavit-in-opposition on 22.10.2019. It has been averred therein that as per Clause 5 of each of the agreements, it was agreed that on completion of the RCC Market Complex, the petitioners would be assigned allotted rooms therein but there was no agreement as regards the security money in those agreements. After completion of the RCC Market Complex a Board Meeting of the respondent Sarupathar Municipal Board was held on 06.08.2019 and it was resolved in the said Board Meeting that the security money would be fixed at ₹ 2,00,000/- and ₹ 1,50,000/- respectively against allotment of shops. After such Resolution, the matter was intimated to the petitioners along with the other shopkeepers. As the interim order was passed on 22.02.2019, the respondent Municipal Board decided to allow the petitioners to enter into a fresh agreement and thereafter, to handover possession of rooms to the petitioners in the newly constructed RCC Market Complex, subject to deposit of ₹ 50,000/- each by them. It is further averred that 4 [four] out of the 6 [six] writ petitioners entered into a fresh agreement each with the respondent Sarupathar Municipal Board by depositing ₹ 50,000/- each for their rooms and thereafter, are continuing their business from

the rooms allotted to them in the newly constructed RCC Market Complex.

7. The two contempt petitioners, who did not enter into fresh agreements with the respondent Municipal Board by depositing ₹ 50,000/- as security money, had preferred the contempt petition on the ground that the respondent Sarupathar Municipal Board refused to allot the 'respective' rooms to them. According to the two contempt petitioners, the 'respective' rooms in the newly constructed RCC Market Complex should have been on its front side. The contempt petitioners have contended that the Chairman of the Sarupathar Municipal Board informed that if they wanted the rooms on the front side of the newly constructed RCC Market Complex, they would have to deposit ₹ 2,00,000/- each for such allotment. Such contention of the petitioners has been refuted in the affidavit-in-opposition by stating to the effect that the two contempt petitioners filed their applications on 25.03.2019 and wanted allotment of rooms in the front side of the newly constructed RCC Market Complex as against their earlier allotted Room no. 59 and Room no. 60 respectively in the already demolished old market complex. On receipt of the said applications, the Chairman of the Sarupathar Municipal Board wrote to the two contempt petitioners indicating the reasons as to why the rooms on the front side of the newly constructed RCC Market Complex could not be allocated to them and the same would be offered in the event of deposit of requisite security amount fixed for such rooms as per the Resolution of the respondent Municipal Board taken on 06.08.2019. The copies of the Offer Letter dated 27.03.2019, sent by the Chairman of the Sarupathar Municipal Board to the two contempt petitioners, are part of the affidavit-in-opposition. It is noticed that by the said two Offer Letters, the two contempt petitioners were offered allotment of room no. 12 and room no. 13 in the newly constructed RCC Market Complex. The reasons for such allotment were also assigned in those offer letters. It was further informed to the two contempt petitioners that the security amount for the rooms on the front side of the newly constructed RCC Market Complex was not fixed and the same would be offered to them in the event the respondent Municipal Board would fix the security amount for such rooms on the front side and if the petitioners deposit to the same.

8. From the aforesaid facts and circumstances of the case, it has clearly emerged that the two contempt petitioners were offered two rooms being Room no. 12 and Room no. 13

respectively, immediately on 27.03.2019. The contention of the two contempt petitioners that they were not offered their 'respective' rooms in the newly constructed RCC Market Complex appears to be a misconceived one. The agreements the two contempt petitioners had executed with the respondent Sarupathar Municipal Board in the year 2017, did not indicate that they would be offered a previously identified rooms in the newly constructed RCC Market Complex. The agreements were only to the effect that the respondent Sarupathar Municipal Board would offer rooms to them in the newly constructed RCC Market Complex and it is found that rooms were accordingly offered to the two contempt petitioners also, as like the 4 [four] writ petitioners.

9. In the above obtaining fact situation, this Court does not find any deliberate disobedience of the direction given by this Court in the interim order dated 22.02.2019. In such view of the matter, there is no necessity to continue with the contempt case, Contempt Case[C] no. 315/2019. Accordingly, the same is closed.

10. In so far as the grievances raised in the writ petition is concerned, it is clear that from the stand taken by the sole respondent i.e. the Chairman of the Sarupathar Municipal Board in the affidavit-in-opposition, filed on 22.10.2019, that all the 6 [six] petitioners were offered rooms in the newly constructed RCC Market Complex and the same goes to indicate that the respondent Municipal Board did not act further in terms of the letter dated 06.02.2019, which has been assailed by the 6 [six] petitioners in the writ petition. As the 4 [four] out of 6 [six] petitioners have already entered into fresh agreements with the respondent Municipal Board, the parties to the said fresh agreements shall carry out the obligations undertaken by them in those agreements. In so far as the remaining 2 [two] writ petitioners are concerned, who were the contempt petitioners, it is open for them to accept the offer of allotment of rooms made to them by the respondent Municipal Board by the Offer Letter dated 27.03.2019 and to enter into fresh agreements in similar manner as the other four petitioners, if such rooms are available, as on date, for allotment. If such agreements are accepted by the said two petitioners, the parties to the agreements shall carry out the respective obligations as per the terms and conditions of the agreements.

11. With the aforesaid observations, the writ petition is disposed of.

JUDGE

Comparing Assistant