

GAHC010125642017



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

Case No. : I.A.(Civil)/1752/2017
In WP(C) No. 3004/2017

SMT. SHAKUNTALA AGARWAL and 3 ORS.

VERSUS

THE STATE OF ASSAM AND 4 ORS

Advocate for the Petitioner : MRG AGARWAL
Advocate for the Respondent : SC, GMC

Linked Case : **WP(C)/3004/2015**

SMT. SHAKUNTALA AGARWAL and 3 ORS.
W/O LT. ASHOK KUMAR AGARWAL

2: VIJAY KUMAR AGARWAL
S/O LT. BHANWAR LAL AGARWAL

3: ANIL KUMAR AGARWAL
S/O LT. BHANWAR LAL AGARWAL

4: AJAY KUMAR AGARWAL @ AJAY AGARWAL
S/O LT. BHANWAR LAL AGARWAL
ALL ARE R/O H/NO.23
BYE LANE NO.3
TARUN NAGAR
G.S. ROAD
P.O. BHANGAGARH
P.S. DISPUR
GHY-5
DIST- KAMRUP METRO
ASSAM
VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE SECY. TO THE GOVT. OF ASSAM
GUWAHATI DEVELOPMENT DEPTT.
ASSAM SECRETARIAT
DISPUR
GHY-6

2:THE G.M.D.A.
REP. BY ITS CHIEF EXECUTIVE OFFICER
STATFED BUILDING
BHANGAGARH
GHY-5

3:THE CHAIRMAN
G.M.D.A.
STATFED BUILDING
BHANGAGARH
GHY-5

4:THE CHIEF EXECUTIVE OFFICER
G.M.D.A.
STATFED BUILDING
BHANGAGARH
GHY-5

5:THE GUWAHATI MUNICIPAL CORPORATION
REP. BY ITS COMMISSIONER
GMC
HEAD OFFICE
PANBAZAR
GHY-1

Advocate for : MR.K AGARWAL
Advocate for : appearing for THE STATE OF ASSAM AND 4 ORS

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

03-01-2023

Heard Shri P. D. Nair, learned counsel for the petitioners. Also heard Shri S. Bora, learned Standing Counsel for GMC, GMDA, GDD who appears for all the respondents.

There is also an IA being IA(C) No. 1752/2017 which is being considered alongwith the writ petition.

The writ petition is pending since the year 2015 and pertains to certain actions of the GMDA initiated vide a notice dated 05.12.2014. However, before going to the issues involved, it would be beneficial if the facts of the case are narrated here in brief.

The projected case of the petitioners is that a single sided tin-roof shed with GI sheet walls was constructed on the plot of land of the petitioner at Tarun Nagar in 1985-86 which was assessed by the Municipality in 1987 and tax has been being paid regularly. Thereafter, a three storied RCC building was constructed in 1993-1998 after obtaining requisite permissions from GMDA. The permission however was only for residential purpose. It is the case of the petitioner that since they deal in business of electrical goods and was having a shop at Lakhtokia, certain goods were also stored on the ground floor of the RCC building. The petitioners claimed that in the area of the petitioner, there were many other commercial establishments, godowns, hotels etc. and therefore there was no strict compliance regarding Master Plan and Zoning Regulation as per which the area in question was termed as Residential.

Shri Nair, the learned counsel for the petitioners submits that as per the present action, the "A" type tin-roof shed for which taxes are being regularly paid since its inception are being questioned with the allegation of unauthorized constructions. He submits that when the same was assessed by the municipal authority from the date of its constructions and taxes being paid, the question of the same being unauthorized construction will not arise and in any case, the learned counsel submits that he is willing to apply for regularization of the said constructions. As regards the other action by which the ground floor of the RCC construction has been sealed and also asked to demolish with the allegation of illegal use, the learned counsel has submitted that in this regard the aforesaid IA has been filed and in any event the petitioners do not intend to use the said constructions for any other purpose other than residential. Though Shri Nair, the learned counsel has submitted that the petitioners were picked out and meted with discrimination inasmuch as many commercial structures exists in

the vicinity, the petitioners would not go to that aspect of the matter and would utilize the said building only for residential purpose.

Shri S. Bora, the learned counsel appearing for all the respondents does not seriously oppose the proposals advanced by the learned counsel for the petitioners. He however submits that to facilitate the authorities to come to a logical conclusion, the petitioners are required to apply in the prescribed format for regularizing the construction of the "A" type building alongwith requisite fee and other requirements. As regards the use of the residential building, the petitioners are required to submit an undertaking accompanying by necessary affidavits. The learned Standing Counsel further submits that in case any part of the building is sought for commercial purpose, due permission has to be taken from the authorities in accordance with law.

In view of the above, the instant writ petition as well as the IA is disposed of by granting a month's time to the petitioners to apply for regularization of the construction of the "A" type house mentioned above in the prescribed format and by paying the necessary fees and submitting the other requirements which would be considered by the authorities necessary. The authorities would also taking into consideration the fact that the structure is existing for about 35 years. As regards the RCC two storied building is concerned, the petitioners have undertaken to use only for residential purpose and in this regard would file a necessary Undertakings accompanied by affidavit to the authorities. Further, as proposed by Shri Bora, the learned counsel in the event the petitioner inland to use any part of the building for commercial purpose, the same shall be done only after the due permission from the competent authority.

Accordingly, impugned orders dated 16.02.2015 and 13.05.2015 stand set aside.

It is also provided that the seal which has been affixed in the room of the ground floor of the RCC building be removed by the authorities within a period of 7 days and the petitioners be allowed to take out all the goods which are inside the room.

In view of the aforesaid direction, the GMDA would revoke their direction to the

APDCL for disconnection of electricity and in this regard the petitioner may also apply independently for reconnection with the copy of the order.

Writ petition as well as the IA accordingly stand disposed of.

JUDGE

Comparing Assistant