

GAHC010177202020



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

Case No. : WP(C)/5320/2020

ASSAM REAL ESTATE AND INFRASTRUCTURE DEVELOPERS
ASSOCIATION (AREIDA)
HAVING ITS REGISTERED OFFICE AT LANDMARK BUILDING, MG ROAD,
MACHKHOWA, GUWAHATI 781009, KAMRUP M ASSAM, REPRESENTED BY
ITS PRESIDENT, SHRI PRANAB KUMAR SHARMA, SON OF LATE
KABINDRA NATH SHARMA, AGED ABOUT 56 YEARS, RESIDENT OF
PALMS ENCLAVE, BELTOLA, GUWAHATI 781028, KAMRUP M ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY TO THE GOVT.
OF ASSAM. GUWAHATI DEVELOPMENT DEPARTMENT, JANATA BHAWAN,
D BLOCK, SECOND FLOOR, DISPUR GUWAHATI 781006

2: THE PRINCIPAL SECRETARY
GOVT. OF ASSAM
GUWAHATI DEVELOPMENT DEPARTMENT
JANATA BHAWAN
D BLOCK
SECOND FLOOR
DISPUR GUWAHATI 781006

3: THE GUWAHATI METROPOLITAN DEVELOPMENT AUTHORITY
BHANGAGARH
GUWAHATI 781005
KAMRUP M ASSAM
REPRESENTED BY THE CHAIRMAN

4: THE CHIEF EXECUTIVE OFFICER

GUWAHATI METROPOLITAN DEVELOPMENT AUTHORITY

BHANGAGARH
GUWAHATI 78105
KAMRUP M ASSAM

5:THE UNDER SECRETARY
GOVERNMENT OF ASSAM
GUWAHATI DEVELOPMENT DEPARTMENT
JANATA BHAWAN
D BLOCK
SECOND FLOOR
DISPUR
GUWAHATI 78100

For the Petitioner(s) : Mr. K. N. Choudhury, Sr. Advocate
: Mr. D. J. Das, Advocate

For the Respondent(s) : Mr. S. Bora, Standing Counsel, GDD

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

Date : 29-09-2023

1. The instant writ petition has been filed by the Petitioner challenging the Letter under Memo No.GDD.109/2009/Pt-I/809 dated 19.10.2020 issued by the Under Secretary to the Government of Assam, Guwahati Development Department as well as seeking a direction upon the said High Power Single Window Clearance Committee not to consider the proposal placed before the said Committee.

2. The Petitioner herein is an association registered under the Societies Registration Act, 1860 and represents the Assam Real Estate and Infrastructure Developers collectively with regard to various issues relating to Assam Real Estate and Infrastructure Developers.

3. From a perusal of the writ petition, it transpires that the Petitioner's association is aggrieved by the notification dated 19.10.2020 issued by the Under Secretary to the Government of Assam, Guwahati Development Department whereby a "Single Window Clearance Committee" was constituted with the Departmental Minister as its Chairman. It is the case of the Petitioner that the relevant statutes and more particularly the Guwahati Building Construction (Regulation) Act, 2010 (for short the "Act of 2010") and its Byelaws stipulates that the power to issue the building permit is statutorily conferred upon the Guwahati Municipal Corporation and therefore the Single Window Clearance Committee so constituted is outside the scope of the Act of 2010.

4. At this stage, this Court finds it relevant to take note of the order passed by this Court on 04.02.2021 whereby this Court after taking account the respective stands of the parties had directed that the Single Window Clearance Committee constituted by the notification dated 19.10.2020 i.e. the impugned notification shall not in any manner interfere with the functioning of the GMDA and GMC Authorities in discharge of their statutory functions as per the provisions of the Act of 2010 and the Byelaws of 2014 with regard to the sanction of the Planning Permit and the Building Permit. Taking into account that the Co-ordinate Bench of this Court had passed a detailed order, this Court finds it relevant to quote the relevant portion of the said order dated 04.02.2021 which is as hereinafter:

"From a perusal of the affidavit dated 22.01.2021 filed by the Joint Secretary to the Govt. of Assam, Guwahati Development Department, it is apparent that it is also the stand of the Government that the authority to grant building permission has been delegated to the GMC and other local bodies as per the provisions of Guwahati Building Construction (Regulation) Act, 2010. The provisions of Rule 5 of the Bye-Laws of 2014, which deals with procedure for sanction, also makes it clear that Planning Permit shall be granted by the GMDA on the

recommendation of the Town Planner of the Guwahati Metropolitan Development Authority while the Building Permit shall be granted by the Guwahati Municipal Corporation on the recommendation of the Associate Planner. The relevant provisions of the statute does not recognize the role of any other agency in the process of sanction of Planning Permit and Building Permit.

In so far as the role of the "Single Window Clearance Committee" is concerned, by filing a clarificatory affidavit dated 03.02.2021, the Under Secretary of the Guwahati Development Department has made the following statements :-

"2. That the deponent begs to state that the Single Window Clearance Committee has been constituted only to facilitate the process of grant of Planning Permits and Building Permits to be granted by the GMDA and the GMC respectively in terms of the procedure prescribed for the same under the Guwahati Building Construction (Regulation) Byelaws, 2014. Keeping in view the mandatory requirements of NOCs to be obtained from various external agencies for the grant of Building Permit for high rise buildings and the time schedule prescribed by the Bye-laws for the grant of both the permits, the Single Window Clearance Committee would only facilitate the clearance of the applications in a time bound manner with due compliance of the provisions of the Byelaws."

From the submissions made by the learned counsel for the parties as well as the statements made in the affidavits filed by the respondents, it is apparent that the exclusive role and domain of the GMDA and GMC authorities with regard to their jurisdiction to grant Planning Permit and Building Permit respectively, under the statute has not only been recognized but has also been admitted by the respondents. If that be so, there can be hardly any doubt about the fact that the "Single Window Clearance Committee" constituted by the

impugned notification cannot have any role in the matter of sanctioning Planning Permit and Building by superseding the jurisdiction conferred upon the GMDA and GMC being statutory authorities nor can the Committee make any recommendation on that behalf, unless the statute is amended.

At this stage, Mr. Mazumdar, learned Additional Advocate General, Assam, has submitted that once the proposed amendment of the Act of 2010 and the Bye-laws of 2014 are brought into effect, a single agency would have exclusive jurisdiction in the matter. However, the fact remains that the said amendment has not yet been brought into effect. Therefore, the matter calls for further examination.

In view of the above, issue notice of motion returnable in six weeks.

Since Ms. M. Bhattacharjee, learned Standing Counsel, GMC, has entered appearance and accepted notice on behalf of all the respondents, no formal notice is required to be sent in this case. However, extra copies of the writ petition, adequate in numbers, be furnished to the learned Standing Counsel, within a week from today.

Heard on the prayer of interim relief.

Having regard to the facts and circumstances of the case in its entirety, it is hereby provided that until further orders, the "Single Window Clearance Committee" constituted by the impugned notification dated 19.10.2020 shall not, in any manner, interfere with the functioning of the GMDA and GMC authorities in discharge of their statutory functions as per provisions of the Act of 2010 and the Bye-laws of 2014 with regard to sanction of Planning Permit and Building Permit."

5. From a perusal of the above quoted portion of the order dated 04.02.2021, it is seen that the Additional Advocate General had made a submission to the effect that once the proposed amendment of the Act of 2010 and the Byelaws of 2014 are brought into effect, a Single Agency would have exclusive

jurisdiction in the matter. Be that as it may, it is relevant to take note of that during the pendency of the instant writ petition, the Act of 2010 was amended by the Guwahati Building Construction (Regulation) (Amendment) Act, 2022 (for short "the Amending Act of 2022") which had come into force on 15.03.2023. Section 5 of the Act of 2010 was amended.

6. It is noteworthy herein to state that even after the amendment carried out, Section 5(2) of the Act of 2010 stipulates that the Planning Permit shall be issued by the Guwahati Metropolitan Development Authority and the Building Permit shall be issued by the Guwahati Municipal Corporation. Section 5(2) as it stands post the amended by the Amending Act of 2022 is reproduced hereinunder:

“(2) The form as may be prescribed under sub-section (1) shall be of two parts being the "Part-I" for Planning Permit and Part-II for "Building Permit". The Planning Permit shall be issued by the Guwahati Metropolitan Development Authority and Building Permit shall be issued by the Guwahati Municipal Corporation, or other Urban Local Bodies or Panchayats, as the case may be in respective areas, within the Guwahati Metropolitan Area. In case of other areas Planning Permit shall be issued by respective Development Authority constituted under Assam Town and Country Planning Act, 1959 and Building Permits shall be issued by Municipal Corporation under Assam Municipal Corporation Act, 2022, Municipal Boards constituted under the Assam Municipal Act, 1956 and Gaon Panchayats falling under Notified Master Plan Areas as the case may be within the State.”

7. It would therefore be seen that even after the amendment carried out by the Amending Act of 2022, the Single window Clearance Committee does not find any place. The Planning Permit can only be issued by the Guwahati Metropolitan Development Authority and the issuance of the Building Permit

comes exclusively within the jurisdiction of the Guwahati Municipal Corporation. Under such circumstances, the said impugned notification dated 19.10.2020 being contrary to the provisions of the Act of 2010 prior to its amendment as well as after its amendment is required to be interfered with for which the said impugned notification dated 19.10.2020 stands set aside and quashed.

8. Consequently, it is observed that the said Single Window Clearance Committee so constituted by the impugned notification cannot consider any building proposal.

9. With above observations and directions, the instant writ petition stands disposed of.

JUDGE

Comparing Assistant