

GAHC010183012021



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

Case No. : WP(C)/6036/2021

SHARPNEZ ASSOCIATES AND ANR
REP. BY ZOHEB AZIZ LASKAR (AUTHORIZED SIGNATORY) HAVING ITS
OFFICE AT - TOLSTOY MARG, GUWAHATI, P.O. HATIGAON, P.S. HATIGAON,
KAMRUP (M), GUWAHATI, PIN-781038, ASSAM.

2: ZOHEB AZIZ LASKAR
PARTNER OF SHARPNEZ ASSOCIATES
S/O. HIFZUR RAHMAN LASKAR
R/O. HOUSE NO.119
SIXMILE DARANDHA
SUBHAN PATH
P.O. KHANAPARA
PIN-781022
KAMRUP (M)
GUWAHATI
ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, GUWAHATI
DEVELOPMENT DEPTT., DISPUR, GUWAHATI-781006, ASSAM.

2:THE GUWAHATI MUNICIPAL CORPORATION

REP. BY ITS COMMISSIONER
HAVING ITS OFFICE AT PANBAZAR
GUWAHATI-781001
ASSAM.

3:THE COMMISSIONER

GUWAHATI MUNICIPAL CORPORATION
HAVING ITS OFFICE AT PANBAZAR

GUWAHATI-781001
ASSAM

Advocate for the Petitioner : MR. H. BURAGOHAIN

Advocate for the Respondent : SC, GMC

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

09.01.2023

Heard Shri H Buragohain, learned counsel for the petitioners. Also heard Shri S Bora, learned Standing Counsel, GMC and GDD.

2. Considering the subject matter of dispute and also the fact that the pleadings have been exchanged, this writ petition is taken up for disposal at the admission stage.

3. The petitioner no. 1 is a partnership firm and the petitioner no. 2 is a partner, who is representing the petitioner no. 1. The facts projected are that the petitioners had participated in a Notice Inviting Tender (NIT) for a work of installation of Deep Tube Well at the Debadaru Path in Guwahati. The bid of the petitioners having found suitable, award of contract was allotted vide order dated 25.02.2021. Pursuant thereto, the petitioners selected a plot of land in the area and after taking necessary no-objection from the owner had started the work. However, the running bills have not been paid to the petitioners for which the work could not be completed within the time frame.

4. The petitioners claim to have submitted a number of representations before the Corporation. However, they have not been paid any amount by the Corporation

whereas the work, according to the petitioners, has been completed to the extent of 80 percent.

5. Shri S Bora, learned counsel for the petitioners has drawn the attention of this Court to the communication dated 25.02.2021 which is "Issue of Notice to Proceed Work". By the said communication, the petitioners were directed to go ahead with the work on a contract price of Rs. 49,71,000/- which was to be completed within a period of 3 months. A representation dated 10.05.2021 has also been referred to. In the writ petition, certain photographs demonstrating the work done have also been annexed. Since, an issue of permission of the owner of the said plot of land was indicated in the affidavit-in-opposition, in the reply-affidavit filed on 16.02.2022, an affidavit by the land owner on whose land, the installation of the deep bore well has been made, has also been annexed. By the said affidavit, no-objection has been granted for the said installation.

6. Shri Buragohain, learned counsel for the petitioners, accordingly submits that there is no reasonable ground to withhold the payment for the works done. He emphasized that there is no dispute with regard to the work done by the petitioners.

7. Shri Bora, learned Standing Counsel, GMC fairly submits that there is no dispute with regard to the work but with regard to the site. He submits that at no point of time, the GMC had indicated the site where the work was supposed to be done. Accordingly, Shri Bora, learned Standing Counsel submits that the reason for withholding the amount is not doing the construction work on an approved site. The learned Standing Counsel, however, fairly submits that there is no dispute that the work has progressed in the right earnest and is at the stage of completion.

8. After hearing the parties, certain things appears from the pleadings as well as

the materials placed before this Court. The work, in question was preceded by a regular process which culminated in the "Issue of Notice to Proceed Work", dated 25.02.2021. It is also not in dispute that the construction is in the Debadaru Path. The only reason cited for withholding the payment is that the construction was not done on a site to be selected by the GMC.

9. Though the aforesaid ground is taken, in the opinion of this court, the said ground will not be of much relevance, inasmuch as, till now, there is no complaint from any quarters regarding the site and on the contrary, in reply-affidavit, a document has been annexed whereby the owner of the land has expressed his no-objection to the said installation.

10. That being the position and also the fact that the construction, in question has proceeded, this Court is of the view that withholding the payment relating to the running bills of the petitioners would not be a justified action.

11. Accordingly, it is directed that the running bills of the petitioners be released forthwith and in any case, on or before 30.01.2023 so as to enable the petitioners to complete the work and after completion of the same, payment of the balance amount be made in accordance with law.

12. The writ petition is, accordingly disposed of.

JUDGE

Comparing Assistant