

GAHC010185922014



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

Case No. : WP(C)/3507/2014

BIMAL KUMAR SURANA
S/O LT. BIRDHI CHAND SURANA PROPRIETOR, M/S SHREE CHAND
RIDHAKARAN, RESIDENT OF DUGAR BUILDING, JAIL ROAD, GUWAHATI-
781001.

VERSUS

THE COMMISSIONER, GUWAHATI MUNICIPAL CORPORATION and ANR.
PANBAZAR, GUWAHATI- 781001.

2:SHRI PAWAN KUMAR SHARMA
S/O LT. KAVIRAJ JAGADISHWAR SHARMA R/O KEDAR ROAD
GUWAHATI- 781001

For the Petitioner(s) : Mr. M. K. Choudhury, Advocate
: Mr. D. K. Das, Advocate

For the Respondent(s) : Mr. S. Bora, SC, GMC
: Mr. K. P. Pathak, Senior Counsel
: Mr. A. Phukan, Advocate for Respondent No.2

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 28.11.2023

1. Pursuant to a dispute which culminated into an order passed on consensus by the Division Bench of this court on 30.08.1999 in Writ Appeal No.138/1999, it

was observed that the Respondent No.2 herein who was the Respondent No.3 in the said appeal proceedings shall pay a lump sum amount of Rs.50,000/- to the Petitioner who was the appellant therein within a period of 2 (two) months from that date and also out of the construction which was coming up, the Respondent No.3 therein (the Respondent No.2 herein) shall rent out a constructed area measuring 650 sq. ft. for which the Petitioner shall pay a sum of Rs.2,500/- as rent per month.

2. Mr. D. K. Das, the learned counsel appearing on behalf of the Petitioner submitted that the order passed by the Division Bench of this Court dated 30.08.1999 was passed without taking into consideration the affidavit which was on record and it was on account of the fault of the counsel who was then appearing for the Petitioner, the actual agreement between the Petitioner and the Respondent No.2 was not reflected in the order dated 30.08.1999.

3. Be that as it may, from the relief(s) sought for in the instant writ petition, it reveals that the Petitioner in effect seeks a modification to Clause No.(ii) of the order dated 30.08.1999. Clause (ii) of the order dated 30.08.1999 passed by the Division Bench of this Court in WA No.138/1999 is reproduced hereinbelow:

“(ii) That out of the construction which is coming up, the Respondent No.3 shall rent-out a constructed area measuring 650 Sq. ft. for which the appellant shall pay a sum of Rs.2,500/- as rent per month.”

4. By way of the instant writ petition, it is the prayer of the Petitioner that the Respondent No.2 herein who was the Respondent No.3 in the said Writ Appeal proceedings be directed to provide the Petitioner with the constructed area measuring 650 sq. ft. on a monthly rent of Rs.2,000/- per month in the completed building known as “Jagdishwar Palace” located at Fancy Bazaar, Guwahati in ground floor of the said building in terms with the assurance given

by the Respondent No.2 herein in Misc. Case No.1403/1998 arising out of Civil Rule No.6384/1998

5. It is the opinion of this Court that the issuance of a writ of mandamus which have been sought for would amount to issuing a writ against the order passed by the Division Bench of this Court which is not permissible as per law.

6. The learned counsel for the Petitioner submitted that the Petitioner on legal advice had been bonafidely and diligently pursuing the instant litigation and as such liberty may be given to be Petitioner to approach the appropriate forum seeking modification of the order dated 30.08.1999 passed in Writ Appeal No.138/99. He further submitted that he may be permitted to withdraw the instant writ petition with a liberty to approach the proper forum.

7. This Court having given an anxious consideration to the submission of the counsels for the parties and taking into account that the writ which has been sought for cannot be issued by this Court and the submissions so made by the counsel of the Petitioner that he may be permitted to withdraw the instant writ petition with a liberty to approach the appropriate forum, this Court closes the instant writ petition on withdrawal.

8. The withdrawal of the instant writ petition shall not act as a res-judicata to approach the appropriate forum seeking modification/review of the order dated 30.08.1999 passed in WA No.138/99, if otherwise permissible under law.

JUDGE

Comparing Assistant