

GAHC010197352023



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

Case No. : WP(C)/5133/2023

RAJAK UDDIN AHMED
S/O LATE ROHIM UDDIN AHMED, R/O VILL- RONGAGORA ROAD, NEAR
ADITYA HOSPITAL, P.O. AND P.S.-TINSUKIA, DIST- TINSUKIA, ASSAM, PIN-
786125

VERSUS

THE STATE OF ASSAM AND 10 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, DEPARTMENT OF MUNICIPAL ADMINISTRATION, DISPUR,
GUWAHATI, KAMRUP (M), PIN-781006

2:THE SECRETARY TO THE GOVT. OF ASSAM
DEPARTMENT OF MUNICIPAL ADMINISTRATION
DISPUR
GUWAHATI
KAMRUP (M)
PIN-781006

3:THE SECRETARY TO THE GOVT. OF ASSAM
DEPARTMENT OF REVENUE AND DISASTER MANAGEMENT
DISPUR
GUWAHATI
KAMRUP (M)
ASSAM
PIN-781006

4:THE DISTRICT COMMISSIONER
TINSUKIA
P.O. AND P.S.-TINSUKIA
DIST- TINSUKIA
ASSAM
PIN-786125

5:THE SUPERINTENDENT OF POLICE
TINSUKIA
P.O. AND P.S.-TINSUKIA
DIST-TINSUKIA
ASSAM
PIN-786125

6:THE MUNICIPAL BOARD
TINSUKIA
REPRESENTED BY ITS CHAIRMAN
TINSUKIA MUNICIPAL BOARD
TINSUKIA
P.O. AND P.S.-TINSUKIA
ASSAM
PIN-786125

7:THE CHAIRMAN
TINSUKIA MUNICIPAL BOARD
TINSUKIA
P.O. AND P.S.-TINSUKIA
DIST-TINSUKIA
ASSAM
PIN-786125

8:THE EXECUTIVE OFFICER
TINSUKIA MUNICIPAL BOARD
TINSUKIA
P.O. AND P.S.-TINSUKIA
DIST-TINSUKIA
ASSAM
PIN-786125

9:THE SUB-DIVISIONAL ENGINEER
APDCL
SUB-DVISION-1
PARIKATIA
TINSUKIA
P.O. AND P.S.-TINSUKIA
DIST-TINSUKIA
ASSAM
PIN-786125

10:THE OFFICER-IN-CHARGE
TINSUKIA POLICE STATION
TINSUKIA
P.O. AND P.S.-TINSUKIA
DIST-TINSUKIA
ASSAM

PIN-786125

11:THE TOWN PLANNER
TINSUKIA MUNICIPAL BOARD
TINSUKIA
P.O. AND P.S.-TINSUKIA
DIST-TINSUKIA
ASSAM
PIN-786125

12:THE ASSISTANT ENGINEER
TINSUKIA
P.O. AND P.S.-TINSUKIA
DIST-TINSUKIA
ASSAM
PIN-78612

For the Petitioner (s) : Mr. A.K. Purkayastha. Advocate.
Mr. R.C. Paul, Advocate.

For the Respondent (s) :Ms. N. Bordoloi, Advocate.

BEFORE

HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

01.09.2023

The instant writ petition has been filed by the Petitioner challenging the final demolition notice dated 17.08.2023, wherein there is a direction to the Petitioner to vacate and demolish the unauthorized construction of the building under Dag No. 419/420 covered by P.P. No.-50(N), 316(O), T.S. No. 2.

2. Mr. A.K. Purkayastha, the learned counsel appearing on behalf of the Petitioner submits that taking into account that the alleged illegal construction which has been carried out is in respect to the Government land for which an application seeking settlement under

the Basundhara 2.0 Scheme has also been filed, he may be permitted to withdraw the instant writ petition with a liberty to approach the Tinsukia Municipal Board for regularizing the construction so carried out by the Petitioner. He further submits that till such application is not disposed of, the Tinsukia Municipal Board ought to be restrained from carrying out any demolition as mentioned in the impugned notice dated 17.08.2023.

3. This Court have duly taken note of the reply filed by the Petitioner on 13.12.2022 as well as the application so filed by the Petitioner seeking settlement of 4 lechas of land in Dag No. 420.

4. The submission made by the Petitioner that the Petitioner would approach the Respondent Board for regularization of the construction is a fair submission in the opinion of this Court, taking into account that the Tinsukia Municipal Board has the authority to grant such regularization if permissible under the Assam Municipal Act, 1956 and the Building Bye-laws framed thereunder.

5. This Court also duly takes note of the submission that if any demolition is carried out prior to the consideration of the regularization application to be filed by the Petitioner, the regularization application itself would become infructuous.

6. Under such circumstances, this Court permits the Petitioner to withdraw the instant writ petition. The Petitioner is further given the liberty to submit an application seeking regularization before the

Chairman, Tinsukia Municipal Board within 10 days from today. Till the final consideration of the said regularization application, no demolition be carried out by the Respondent Board. It is however made clear that the Respondent Board shall consider such application without being influenced by any observation made herein and strictly in accordance with law.

7. Mr. A.K. Purkayastha, the learned counsel further submitted that a copy of the instant order be furnished to him in view of the fact that this Court is in recess till 6th of September, 2023 and the demolition date as per the impugned notice dated 17.08.2023 is on 5th of September, 2023.

8. This Court directs the Court Master of this Court to issue a true copy of the instant order to the learned counsel for the Petitioner during the course of the day.

9. The instant writ petition accordingly stands disposed of on withdrawal. This Court clarifies that if within 10 days from today, no application is filed, the Respondent Board shall be at liberty to take such actions as deemed fit in terms with the impugned notice dated 17.08.2023.

JUDGE

Comparing Assistant