

GAHC010242062023



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

Case No. : WP(C)/6251/2023

GAMES VILLAGE RESIDENTS WELFARE SOCIETY AND 2 ORS
A SOCIETY REGISTERED UNDER THE SOCIETIES ACT, 1860,
HAVING ITS OFFICE AT B-2/002, GAMES VILLAGE,
BORSOJAI, BASISTHA, P.S.- BASISTHA,
GUWAHATI- 781029,
REPRESENTED BY ITS SECRETARY.

2: MANJU RANI DEKA
WIFE OF SURESH SAHARIAH

SECRETARY
GAMES VILLAGE RESIDENTS WELFARE SOCIETY

A-11/403
GAMES VILLAGE
BORSOJAI

BASISTHA
GUWAHATI- 781029.

3: ATUL CHANDRA KALITA
SON OF LATE KHAGEN KALITA

FORMER SECRETARY
GAMES VILLAGE RESIDENTS WELFARE SOCIETY

B-2/002
GAMES VILLAGE
BORSOJAI

BASISTHA
GUWAHATI- 781029

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF
ASSAM,
GUWAHATI DEVELOPMENT DEPARTMENT,
DISPUR, GUWAHATI-6.

2:THE GUWAHATI METROPOLITAN DEVELOPMENT AUTHORITY
STATFED BUILDING
BHANGAGARH
GUWAHATI- 781005

REPRESENTED BY THE CHIEF EXECUTIVE OFFICER.

3:THE CHIEF EXECUTIVE OFFICER
GUWAHATI METROPOLITAN DEVELOPMENT AUTHORITY
STATFED BUILDING
BHANGAGARH
GUWAHATI- 781005.

4:SIMPLEX INFRASTRUCTURES LIMITED
SIMPLEX HOUSE
27 SHAKESPEARE SARANI
KOLKATA- 700017

For the Petitioner (s) : Mr. A.C. Borbora, Sr. Advocate.

For the Respondent (s) : Mr. M.K. Choudhury, Sr. Advocate.
Mr. S. Bora, SC, GMDA.
Mr. R.J. Das, Advocate.
Mr. H. Sarman, GA, Assam.

Date of hearing & Judgment : 30.11.2023

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH
JUDGMENT AND ORDER(ORAL)

The instant writ petition is taken up for disposal at the motion

stage itself.

2. The Petitioner No. 1 herein is a Society registered under the provisions of the Societies Registration Act, 1860 and the Petitioner Nos. 2 & 3 are members of the said Society. For the sake of convenience, the Petitioner No. 1 herein is referred to as the Petitioner Society. In the year 2006, the Respondent No. 2 i.e. the Guwahati Metropolitan Development Authority had promoted a residential township by constructing multistoried buildings consisting of 700 flats for the Games Village to accommodate the players and officials of the 33rd National Games held in 2007 at Guwahati over a plot of land admeasuring 36.41bighas. In the said Games Village there are in total 25 numbers of towers classified as Block-A and Block-B. In Block-A there are 16 numbers of towers consisting of 7 floors each with four apartments on each floor having three bedroom flats and in Block-B there are 9 numbers of towers consisting of 7 floors each with 4 apartments on each floor which are two bedroom apartments. Out of the said 700 flats, 696 flats were sold to various individual purchasers who conjointly formed the Petitioner Society.

3. It further reveals that there was also a Memorandum of Understanding (MOU) dated 31.12.2014 entered into between the Petitioner Society and the Respondent No. 2 whereby various powers, operation and management of the Games Village was entrusted to the

Petitioner Society. At this stage, this Court finds it relevant to mention that admittedly, the land in question admeasures 70 bighas. Out of the 70 bighas in 36.41 bighas, constructions were made and this area is hereinafter referred to a Phase-I. In the remaining 33.59 bighas, there was a proposal to construct, which is known as Phase-II.

4. This Court have duly perused the said MOU which have been enclosed to the instant writ petition as Annexure-E. From a perusal of the said MOU, it transpires that the Petitioner Society upon being handed over the management of Phase-1 were to enjoy the right of common facilities, infrastructure developed for the township. However, the Petitioner Society have also to abide by all the Clauses mentioned in the Sale Agreement made with the individual buyers/institutions by the Respondent No. 2 as well as the Bye-Laws of Games Village Residents' Welfare Society. As per the Clause 4 of the said MOU, the Petitioner Society had agreed to keep the premises as well as all partition walls, sewers, drains, pipes and appurtenances thereto in good tenable conditions and in particular so as to support, shelter and protect all parts of the building in as is where is condition. Clause 5 and 6 of the said MOU relates to certain prohibitions insofar as the members of the Petitioner Society are concerned. Clause 8 of the said MOU stipulates that the Respondent No.2 shall have the right to put up additional structures/flats and other commercial buildings/facilities in the land as shown in Phase-II area within the Games Village

boundary and also renovations/up gradation of facilities existing in the Phase-I at its own cost. The Petitioner Society agreed that they shall not claim on the surplus land and the project development as Phase-II in land of 33.59 bighas. It was also agreed that on construction /completion of Phase-II, the facilities like roads, drainage, sewerage, entrance security etc shall be clubbed together if deemed fit as assessed by the Respondent No.2. The Petitioner Society further agreed that they shall have no objection to the same. It was however agreed that in taking up the construction works of the Phase-II, the Respondent No. 2 shall however ensure that there is no unwanted and unwarranted interference like vehicular movement etc which may affect the peace and tranquility amongst the residents of Games Village Phase-I. Clause 8 being relevant for the purpose of the dispute is reproduced hereinunder :

“8. That the First Party shall have the right to put up additional structures/flats/other commercial building facilities in the land shown as Phase-II area within the Games Village boundary and also renovation/up gradation of facilities existed in the phase-I at his own cost. The Second Party shall have no claim on the surplus land and project development as phase-II in land of 33.59 bighas. On construction/completion of the Ph-II, part of the project some of the facilities like roads, drainage, sewerage, entrance security and etc shall be clubbed together if deemed it as assessed by the First Party. The Second Party shall have no objection to it. In taking up the construction Works of the Ph-II, the First Party will however ensure that there is no unwanted and unwarranted interference like vehicular movement etc, which may affect the peace and tranquility amongst the residents of Games Village Ph-1.”

5. Therefore from the above quoted Clause, it would be seen that the Respondent No. 2 as per its own assessment club the roads, drainage, sewerage, entrance security etc of Phase-I and Phase-II of the Games Village as one by clubbing it together and the Petitioner Society cannot have any objection to the same. This Court further finds it relevant to take note of the Master Plan of the Games Village which have been enclosed as Annexure- 1 to the affidavit filed by the Respondent No. 4 from where the buildings in respect to Phase-I and the proposed building of Phase-II could be discerned. At this stage, it is also relevant to observe that the MOU did not give any right to the Petitioner Society to construct. The only right was to enjoy the common facilities and maintain the same.

6. In the backdrop of the above, this Court finds it relevant to take note of that on 30.5.2022, a Communication was issued by the Petitioner Society intimating the Chief Executive Officer of the Respondent No. 2 that the brick boundary wall along with parking area which existed on the southern side of the Games Village was dismantled by the Respondent No. 4 to facilitate their construction activities with an assurance that the same would be rebuilt within a period of three months. However, as nothing was done and there being serious security threat to the residents which includes the officials of SSB, Assam Police, NIA, ITBP etc, the Petitioners Society had started to rebuild the boundary wall on 26.5.2022. It was also

intimated that because of the said act on the part of the Petitioner Society, the officials of the Respondent No. 4 had blocked the access to their water pump House w.e.f. 6.30 PM of 28.5.2022 which is adjacent to the Games Village/construction site of the Respondent No.4 and the same had caused serious inconvenience to the members of the Petitioners Society in their living and performing their duties. Under such circumstances, the Petitioner Society requested the Chief Executive Officer of the Respondent No.2 to intervene in the matter and do the needful at the earliest so as to ensure free flow of essential supply of water to Block B-5, B-6, A-7, A-8, A- 9 and A-10 of the Games Village.

7. The records further reveal that on the same day, the Chief Executive Officer of the Respondent No. 2 issued a Communication to the President of the Petitioner Society intimating that the Petitioner Society had taken steps in contravention to the Sale Agreements entered into with the individual buyers by the Respondent No. 2 as well as also have violated the terms of the MOU. It was also mentioned that the brick wall being constructed did not exist in the original plan and there was no building permission obtained which under law was required for carrying out fresh construction. The Chief Executive Officer further directed the Petitioner Society to demolish the said brick wall which have been constructed illegally and in unauthorized manner at their own cost and expenses within 5 days. It

was also mentioned that in the event of failure of the Petitioner Society to do so, the Respondent No. 2 shall take appropriate action for removal of the unauthorized construction.

8. To the said Communication, the President of the Petitioner Society submitted a reply stating inter alia that the entire campus of Phase-I was guarded by a boundary wall at the time of the National Games and at the time of handing over of the management and maintenance of the Games Village to the Petitioner Society also and therefore the assertion that the boundary wall did not exist in the original plan was true. It further reveals from records that there were series of correspondences between the Petitioner Society as well the Respondent No. 2. However, on 16.8.2020, the Chief Executive Officer of the Respondent No. 2 issued a show cause notice under Sections 87 and 88 of the Guwahati Metropolitan Development Authority Act, 1985(for short 'the Act of 1985'). In the said show cause notice, various violations to the provisions of the Act of 1985 were mentioned and the Petitioner Society was asked to submit the reply within a period of 7 days. This Court at this stage finds it relevant to take note of the unauthorized constructions which were referred to in the said show cause notice as the same have a bearing on the adjudication of the instant dispute. The Schedule of the said Show Cause Notice and more particularly at Serial No. A refers to the alleged unauthorised constructions which for the sake of convenience is reproduced herein

below :-

Schedule :

Manner of Development/construction:

1. *Unauthorized construction of brick wall within the integrated campus of Games Village thereby causing obstruction for ingress and egress to the earmarked site for Phase-II Games Village;*
2. *Unauthorized construction of temple near the main gate ;*
3. *Unauthorized occupation and construction/development of structures and park on the south-west corner of the Games Village.*

9. The Petitioner thereupon submitted a reply on 23.8.2022 to the said show cause notice stating inter alia that there was no contravention to the provisions of Sections 24 and 25 of the Act of 1985 and as such the actions proposed to be taken under the provisions of Sections 87 and 88 the Act of 1985 would be illegal.

10. The records further reveal that the Petitioner Society thereupon approached this Court and filed a writ petition which was registered and numbered as W.P.(C) No.5655/2022 apprehending that without considering the reply which was submitted by the Petitioner Society on 23.8.2022, the Respondent Authorities shall demolish the said unauthorized constructions without giving any opportunity to the Petitioners.

11. This Court vide an order dated 31.8.2022 in W.P.(C) No.

5655/2022 had issued notice and stayed the operation of the notice dated 16.8.2020 (it should have been 16.8.2022 but wrongly mentioned as 16.8.2020) till the next returnable date. Be that as it may, the Respondent No. 2 as well as the Respondent No. 4 herein who were also the Respondents in W.P.(C) No. 5655/2022 filed interlocutory applications seeking vacation/modification and/or alteration of the order dated 31.8.2022. On 8.9.2023, when the matter was listed before this Court, this Court taking into account that the issuance of the show cause notice by the Respondent No. 2 was not without jurisdiction and the Petitioner Society had also duly submitted the reply and it is only on an apprehension that the writ petition was filed, disposed off the writ petition directing the Respondent Authorities to take a decision on the show cause notice dated 16.8.2020 and it was further observed that if any decision is taken on the show cause proceedings which is prejudicial to the interest of the Petitioner Society, a period of 30 days shall be provided to the Petitioners therein from the date of service of such order.

12. It further reveals that on 27.9.2023 an order was passed by the Chief Executive Officer, Guwahati Metropolitan Development Authority. The said order have been impugned in the instant proceedings. This Court therefore finds it relevant to take note of the reasoning contained in the said order. In the said impugned order, it was mentioned that there never existed any wall as claimed by the

Petitioners as per the records available with the authority and a common road for the whole plot of land which is to be used for ingress and egress of the integrated Phase-I and Phase-II of the project was blocked by the unauthorized construction of the brick wall which was illegal and unauthorized and liable to be demolished. It was further observed in the said impugned order that there no permission/consent obtained from the Respondent No. 2 for construction of the temple near the main gate for which the same is liable to be demolished. It was also observed that there was nothing on record available with the Respondent No. 2 to show that the said authority had given any permission to the Petitioner Society to construct any kind of structure and park on the south west corner of the Games Village in lieu of the community hall for which the same was liable to be demolished. It is on the basis of the said reasoning and opinion, the Petitioners Association were asked to remove the unauthorized construction as detailed in the show cause notice dated 16.8.2020 within 30 days from the receipt of the said order dated 27.9.2023 failing which the Respondent No. 2 would be free to proceed with the demolition of the unauthorized construction without giving any further intimation and expenditure thereof shall be recovered from the Petitioner Society.

13. The Petitioners thereupon filed the instant writ petition on 17th

of October, 2023. The matter was taken up by this Court on 18th of October, 2023 wherein taking into account the various disputed question of facts contended and alleged by both the parties, this Court found it fit for appointment of a Commissioner for submission of a report as regards the actual state-of-affairs. In this regard, this Court also finds it pertinent to take note of that pursuant to the appointment of an Advocate Commissioner by the Court vide the order dated 18.10.2023, a report was duly submitted by Mr. H. Sarma, the Advocate Commissioner. This Court further finds it relevant to mention that vide the order dated 18.10.2023, as an interim measure, the impugned order dated 27.9.2023 was suspended till 7.11.2023 and the said interim order is continuing till date.

14. It is also relevant to take note of that pursuant to the filing of the writ petition, the Respondent No. 2 & 3 had filed an affidavit-in-opposition. The Respondent No. 4 had also filed an affidavit-in-opposition. This Court have also duly perused the contents of the same. Apart from the above, the Petitioners had also filed an additional affidavit on 22nd of November, 2023 challenging the report of the Advocate Commissioner on various aspects. In the said additional-affidavit filed by the Petitioners various photographs have been enclosed including the brochure which was issued by the Respondent No. 2 on the basis of which the members of the Petitioner

Society had purchased the flats in question.

15. In the backdrop of the facts detailed above and the pleadings referred to, let this Court consider the respective submissions made by the learned counsels for the respective parties.

16. Mr. A.C. Borbora, the learned Senior Counsel appearing on behalf of the Petitioners submitted that at the time of issuance of the brochure/the advertisement, the Respondent No.2 had stated that the project in question was bounded by boundaries and on the basis of that the learned Senior Counsel submitted that the boundary existed at the time when the members of the Petitioner Society had purchased the flats in question and also at the time when the MOU was entered into by and between the Petitioner Society with the Respondent No.2. He further submitted that the Respondent No. 4 for its convenience sought for demolition of a part of the wall for the purpose of their ingress and egress with an undertaking that they would again reconstruct the said wall. However, as the said wall was not constructed, the Petitioner Society had to reconstruct the wall. He further drew the attention to Clause 4 of the MOU entered into by and between the Petitioner Society and the Respondent No. 4 and submitted that the Petitioner Society had agreed to keep the premises which included the boundary wall in good tenable conditions so as to support, shelter and protect all parts of the building in as where is condition. He further submitted that Clause 8 specifically prohibited

the Respondent No. 4 or even the Respondent No. 2 to use the road as a thorough fare to the Phase-II. The learned Senior Counsel for the Petitioners further submitted that not only the MOU dated 31st of December, 2014 but also by way of a Notification dated 24.2.2015, the operation, maintenance and management of the Games Village Phase-I was handed over to the Petitioner Society. The learned Senior Counsel therefore submitted that this is not a case where there is a requirement of a permission for construction of the wall in question inasmuch as the Respondent No. 2 had themselves constructed the wall which was demolished by the Respondent No. 4 and it being the responsibility of the Petitioner Society as per the MOU, the said wall was reconstructed on the failure of the Respondent No. 4 to reconstruct the wall. He submitted that these aspects of the matter were not at all taken into account by the Respondent no. 3 in issuing the impugned order insofar as the construction of the wall was concerned. The learned counsel further submitted that as regards the other two alleged unauthorized constructions i.e. the construction of a temple and construction of a temporary shed in lieu of a community hall, he submitted that for the said constructions though no permission was obtained but the same can be regularised as the said constructions were made in the earmarked places as per the Approved Plan. He submitted that as regards the said two alleged unauthorised constructions, the Petitioners are not averse to

submitting an application seeking regularisation of such constructions.

17. I have heard Mr. S. Bora, the learned Standing Counsel appearing on behalf of the Respondent No. 2 & 3 who submitted that it is the requirement of Sections 24 and 25 of the Act of 1985 to obtain the No Objection Certificate/the consent before going ahead with any construction. He submitted that there is no materials on record to show that there existed any wall at any point of time. Referring to Clause-8 of the MOU, the learned counsel duly submitted that the said Clause categorically mandates that it is within the authority of the Respondent No. 2 to club the various amenities/facilities pertaining to roads, drainage, sewerage etc of Phase-I and Phase-II and the Petitioner Society could not have objected to the same. He, however, submitted that Clause 8 had put an embargo of using the road for construction purpose of the Phase-II. The learned counsel further drew the attention of this Court to the approved plan to show that the wall which have been constructed has in fact affected the ingress and egress to the Phase-II for which not only the Respondent No. 2 but also the Respondent No. 4 was equally affected. The learned counsel further submitted that as per the MOU entered into between the Petitioner Society as well as the Respondent No. 2, the members of the Petitioners Association were bound to follow the terms of the sale agreement, which did not permit any right to construct to the Petitioner Society or its members.

18. Mr. M.K. Choudhury, the learned Senior Counsel appearing on behalf the Respondent No. 4 submitted that the Respondent No.2 had allocated the land measuring 33.59 bighas to the Respondent No.4 for construction of the Phase-II buildings and on the basis of that, the Respondent No. 4 have almost completed the construction and sold most of the flats to individual purchasers. The learned Senior Counsel submits that the wall which have been unauthorisedly constructed had affected the ingress and egress to the Phase-II and thereby not only lessening the market value of the properties of Phase-II but also exposing the Respondent No. 4 to numerous and unnecessary litigations on various forums. The learned Senior Counsel further submitted that in view of the wall which have been illegally constructed by the Petitioner Society, the Respondent No. 4 is also not in a position to obtain the NOC from the Fire Department without which the completion certificate also cannot be obtained for handing over the flats to the purchasers.

19. I have heard the learned counsel for the parties and have perused the materials on record. From a perusal of the writ petition, it reveals that the Petitioners have sought for a writ in the nature of certiorari for setting aside and quashing of the impugned order dated 27.9.2023. Now the question which arises for consideration before this Court is whether under Article 226 of the Constitution any interference is required with the impugned order dated 27.9.2023. This Court at

this stage finds it relevant to take note of a recent judgment of the Supreme Court in the case of **Central Council for Research in Ayurvedic Sciences and Another Versus Bikartan Das and Others** reported in **2023 SCC Online SC 996**. In the said judgment, the Supreme Court at paragraph Nos. 50, 51 and 52 observed that for issuance of a writ of certiorari under Article 226 of the Constitution, two cardinal principles are required to be followed. Taking its relevance which touches on the jurisdiction of this Court to issue a writ in the nature of certiorari, which this Court is being called upon to exercise, this Court reproduces the said paragraph Nos. 50, 51 and 52 of the judgment hereinbelow :-

“50. Before we close this matter, we would like to observe something important in the aforesaid context: Two cardinal principles of law governing exercise of extraordinary jurisdiction under Article 226 of the Constitution more particularly when it comes to issue of writ of certiorari.

51. The first cardinal principle of law that governs the exercise of extraordinary jurisdiction under Article 226 of the Constitution, more particularly when it comes to the issue of a writ of certiorari is that in granting such a writ, the High Court does not exercise the powers of Appellate Tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. The writ of certiorari can be issued if an error of law is apparent on the face of the record. A writ of certiorari, being a high prerogative writ, should not be issued on mere asking.

52. The second cardinal principle of exercise of extraordinary jurisdiction under Article 226 of the Constitution is that in a given case, even if some action or order challenged in the writ petition is found to be illegal and invalid, the High Court while exercising its extraordinary jurisdiction thereunder can refuse to upset it with a view to doing substantial justice between the parties. Article 226 of the Constitution grants an extraordinary remedy, which is essentially discretionary, although founded on legal injury. It is perfectly open for the writ court, exercising this flexible power to pass such orders as public interest dictates & equity projects. The legal formulations cannot be

enforced divorced from the realities of the fact situation of the case. While administering law, it is to be tempered with equity and if the equitable situation demands after setting right the legal formulations, not to take it to the logical end, the High Court would be failing in its duty if it does not notice equitable consideration and mould the final order in exercise of its extraordinary jurisdiction. Any other approach would render the High Court a normal court of appeal which it is not."

20. From the above quoted paragraphs, it is seen that the first cardinal principle for issuance of a writ of certiorari is that the High Court while exercising the jurisdiction under Article 226 of the Constitution is not exercising the jurisdiction as an Appellate Authority or an Appellate Court. The High Court does not review or reweigh the evidence upon which the determination of the inferior Tribunal purports to have been based. The High Court demolishes the order which it considers to be without jurisdiction or palpably erroneous but does substitute its own views for those of the inferior Tribunal. The Supreme Court also observed that a writ of certiorari can be issued if an error of law is apparent on the face of the record and a writ of certiorari being a high prerogative writ should not be issued on a mere asking. The second cardinal principle for exercise of jurisdiction under Article 226 of the Constitution is that in a given case, even some action or order challenged in the writ petition is found to be illegal and invalid, the High Court while exercising its extraordinary jurisdiction thereunder can refuse to upset it with a view to doing substantial justice between the parties. The powers under Article 226 of the Constitution grants an extraordinary remedy, which is essentially discretionary, although founded on legal injury. It was

observed that it is perfectly open for the writ court, exercising this flexible power to pass such orders as public interest dictates and equity projects. The legal formulations cannot be enforced divorced from the realities of the fact situation of the case. Further to that the High Court, while administering law, has to temper the law with equity and if equitable situation demands after setting right the legal formulations, not to take it to a logical end. The High Court would be failing in its duty if it does not notice equitable consideration and mould the final order in exercise of its extraordinary jurisdiction. The Supreme Court further observed that any other approach by the High Court would render the High Court while exercising the jurisdiction under Article 226 of the Constitution, a normal Court of Appeal, which it is not.

21. In the backdrop of the above proposition of law, let this Court therefore analyse as to whether the impugned order is required to be interfered with in exercise of the certiorari jurisdiction of this Court.

22. The materials on record do not in any manner show or for that matter nothing was shown by the Petitioners that at any point of time there existed a wall prior to the wall constructed by the Petitioner on 26.05.2022 as stated in their communication dated 30.5.2022. This Court also finds it relevant to take note of Sections 24 and 25 of the Act of 1985 which requires the necessity of obtaining a permission for the purpose of raising any construction including a boundary wall.

This Court further finds it pertinent to observe that in the approved plan which is a document placed on record, there is no wall shown wherein the Petitioners had constructed the wall. The Petitioners have neither placed any such construction permission/consent before the Respondent Authorities in respect to the boundary wall in the said show cause proceedings nor anything had been placed before this Court. Under such circumstances, it is therefore the opinion of this Court, that the findings so arrived at by the Respondent No. 3 in the impugned order dated 27.9.2023 insofar as the unauthorized construction of the wall in question cannot be interfered with by this Court as there appears to be no error in passing the impugned order insofar as the wall is concerned.

23. In addition to the above, this Court also finds it relevant to take note of Clause 8 of the MOU dated 31st of December, 2014 where from also nothing could be shown that the Petitioner had the authority to construct any wall. The only authority which is reserved for the Petitioner Society is for maintenance of the common facilities as well as all partition walls, sewers, drains, pipes and appurtenances thereto in good tenable conditions in Clause 4 of the MOU. In Clause 8 of the MOU which have been quoted hereinabove, it would also show that the Respondent No. 2 still reserve the power to put up additional structures /flats and other commercial buildings/facilities in the land as shown in Phase-II area within the Games Village

boundary and also renovations/up gradation of facilities existing in the Phase-I at its own cost. Therefore the power as per Clause 8 was reserved with the Respondent No. 2 for renovations/up gradation of facilities existing in the Phase-I. There is also a clear stipulation in Clause 8 that roads, drainage, sewerage, entrance security etc of Phase-I shall be clubbed together with Phase-II if deemed necessary as per the assessment of the Respondent No. 2 meaning thereby the road in question upon which the unauthorized wall have been constructed can be clubbed by the GMDA with the Phase-II project. The only exception to the use of the roads drainage, sewerage, etc was that the said road, drainage, and sewerage, etc cannot be used for the construction activities to be carried out in respect to Phase-II that too when the same may affect the peace and tranquility amongst the residents of the Games Village Phase-I.

24. Taking into account the above, this Court finds no reason to interfere with the impugned order dated 27.9.2023 insofar as the unauthorized construction of the boundary wall by the Petitioner Society is concerned. Under such circumstances, this Court grants the liberty to the Respondent No. 2 to take appropriate steps as deemed fit in terms with the provisions of the Act of 1985.

25. Now coming to the other two unauthorized constructions which have been mentioned in the order dated 27.9.2023. This Court taking into account the respective submissions of the parties and more

particularly the submission to the effect that the construction of the temple as well as the semi-permanent community hall are in the earmarked area and the specific submission that the Petitioners would submit application for regularizing, it is the opinion of this Court that the said aspect needs to be reconsidered by the Respondent No. 2 & 3 subject to applications filed within the time frame.

26. This Court however finds it relevant to clarify that from the materials available before this Court, no right exists in favour of the Petitioner Society to raise construction of the semi-permanent community hall or the temple. Be that as it may, the Respondent No. 2 had in its brochure duly mentioned that there would be a community hall/park and as such, it is expected that the said Respondent Authorities may consider regularizing the said structures, if permissible under the provisions of the Act of 1985 and the bye-laws framed thereunder. This consideration as directed in respect to the unauthorised construction of the semi-permanent shed and temple shall be made only if the Petitioner Society files an application seeking regularization within 30 days from today. It is also made clear that the consideration for regularization shall be made on the basis of the extant provisions of law.

27. This Court in view of the above, permits the Respondent No. 2 & 3 to forthwith take steps as regards the unauthorised construction of the wall. However, in respect to the temple and semi-permanent shed,

no steps be taken for a period of 30 days from today and if an application is filed for regularization, till such application is not disposed off.

28. With the above observations and direction, the instant writ petition stands disposed off.

JUDGE

Comparing Assistant