

GAHC010045572023



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

**Case No. : WP(C)/7756/2022**

DIMPY DEKA  
D/O. LT. JITEN DEKA  
R/O. 1ST FLOOR  
JASHUDHARA APARTMENT  
CHANDMARI  
NABAGIRI PATH (RED CROSS)  
1ST BYE LANE  
GUWAHATI  
ASSAM  
PIN-781003.

VERSUS

GUWAHATI METROPOLITA DEVELOPMENT AUTHORITY (GMDA) AND 5  
ORS  
REP. BY CHIEF EXECUTIVE OFFICER  
3RD FLOOR  
STATFED BUILDING  
GMCH ROAD  
BHANGAGARH  
KAMRUP (M)  
GUWAHATI  
ASSAM  
PIN-781005.

2:THE CHIEF EXECUTIVE OFFICER  
GUWAHATI METROPOLITAN DEVELOPMENT AUTHORITY (GMDA)  
3RD FLOOR  
STATFED BUILDING  
BHANGAGARH  
GUWAHATI  
ASSAM-781005.

3:REGISTRAR IN CHARGE  
REAL ESTATE REGULATORY AUTHORITY (RERA)  
JAWAHAR NAGAR  
NH-37  
KHANAPARA  
GUWAHATI  
ASSAM  
PIN-781022.

4:SMT. NIRMALI DEKA  
W/O. SRI KHITISH CHANDRA DEKA  
R/O. H.NO.2A  
JASHUDHARA APARTMENT  
3RD FLOOR JASUDHARA APARTMENT  
CHANDMARI  
NABAGIRI PATH (RED CROSS)  
1ST BYELANE GUWAHATI  
ASSAM  
PIN-781003.

5:PULIN KUMAR PATHAK  
R/O. H.NO.2A  
2ND FLOOR JASHUDHARA APARTMENT  
CHANDMARI  
NABAGIRI PATH (RED CROSS)  
1ST BYELANE GUWAHATI  
ASSAM  
PIN-781003.

6:M/S PEARL BUILDERS  
REP. BY ITS PARTNERS  
SRI MRINMOY KUMAR BARUAH AND MR. SOUMIK SAIKIA  
CHARING VILLA  
FLAT NO.3AC  
H.NO.17  
AMARAVATI PATH  
CHRISTIAN BASTI  
GUWAHATI  
ASSAM  
PIN-781005.

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Advocate for : MR R SENSUA  
Advocate for : SC  
G M D A appearing for GUWAHATI METROPOLITA DEVELOPMENT  
AUTHORITY (GMDA) AND 5 ORS

**BEFORE  
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

**ORDER**

**Date : 02-05-2023**

Heard Mr. S Borthakur, learned counsel for the petitioner. Also heard Mr. S Bora, learned counsel for the respondent Nos. 1 & 2, Mr. P Goswami, learned counsel for the respondent No. 3, Mr. UJ Saikia, learned counsel for the respondent Nos. 4 & 5 and Mr. A Dhar, learned counsel for the respondent No. 6.

2. The petitioner is aggrieved with the order dated 02.05.2022 passed by the Chief Executive Officer, Guwahati Metropolitan Development Authority (GMDA), by which the petitioner and one Mrinmoy Baruah have been directed to demolish the non compoundable unauthorized construction, which blocks the entry/exit to the lift in the first floor, in violation of the provisions of the GMDA Act, 1985.

3. The petitioner's case is that the aforesaid impugned order dated 02.05.2022 issued by the GMDA has been made by taking into consideration the order dated 26.04.2022 passed by the Real Estate Regulatory Authority, Assam (RERA) in which the petitioner was not made a party. As such, the impugned order dated 02.05.2022 having been made in violation of the principles of natural justice, the said order should be set aside and the petitioner should be given notice with regard to the complaint made against her and action proposed to be taken by the respondent authorities.

4. The learned counsels for the respondents, on the other hand submit that the petitioner had made an unauthorised construction of the common area on the first floor of the building, thereby blocking the entry/exit into the lift. They

submit that RERA has not made any decision with regard to demolishing the unauthorised construction made by the petitioner and had left the entire issue to be decided by the GMDA, vide order dated 27.05.2022. They also submit that in terms of Section 2(2) of the Real Estate Regulatory Authority Act, 2016, there cannot be any unauthorised construction in the common area for the lift and the lift lobby. They submit that the agreement made between the petitioner and the Builder clearly provides for construction of a lift in the building, which has accordingly been built. They also submit that as per Section 39 of the RERA Act, 2016, the petitioner has an alternative remedy available, if she is aggrieved by the RERA orders dated 26.04.2022 and 27.05.2022, as the petitioner can approach the appellate authority for rectification of any earlier orders made by it. They also submit that the petitioner has not come to Court with clean hands and has played hide and seek with facts, as she has not produced documents showing that she was heard prior to issuance of the impugned order.

5. The learned counsels for the respondents also submit that the site in issue was visited by a Verification Team on 21.09.2021 and a Report was made on 23.09.2021 to the effect that an unauthorised construction had been made by petitioner in the common area, blocking entry/exit to the lift. The petitioner was also given an opportunity of being heard and was accordingly heard by the Officer, who issued the impugned order dated 02.05.2022. As such, there has been no violation of the principles of natural justice. Accordingly, the writ petition should be dismissed as the petitioner has violated the building regulations, as she built up the common area in the first floor.

6. I have heard the learned counsels for the parties.

7. The petitioner's case is that she purchased the entire residential space in the first floor of the Flat No. 1/AB in the residential apartment of "Jasudhara

Apartment". The petitioner's case is that the impugned order dated 02.05.2022 issued by the GMDA has been made by taking into consideration the order dated 26.04.2022 passed by RERA, wherein the petitioner was never made a party. As such, the impugned order, asking the petitioner to demolish the alleged unauthorised construction in the first floor should be set aside, as she was not given an opportunity to contest the complaint made against her. The respondent Nos. 4 and 5 are residents of the same building, but are living in the 3<sup>rd</sup> and 4<sup>th</sup> floor respectively. It was in pursuant to the complaints made by the respondent Nos. 4 and 5 that the impugned order dated 02.05.2022 has been passed by the GMDA, as it had been found that the petitioner had made unauthorised construction of the common area/lobby of the lift, thereby blocking entry/exit to the lift in the first floor.

8. A perusal of the RERA orders dated 26.04.2022, 27.05.2022 and 22.06.2022 shows that the issue of the illegal construction allegedly done in the common area of the first floor had been considered by RERA. The writ petitioner had also submitted a petition to the Town Planner, GMDA in response to the GMDA Notice dated 14.06.2022. The order dated 22.06.2022 issued by the RERA thereafter held that necessary action should be taken by the GMDA after hearing the writ petitioner.

9. The report dated 23.09.2021 made on the basis of the site verification by the GMDA and RERA, pertaining to the unauthorised construction, is to the effect that unauthorised walls and doors have been made by the petitioner. The petitioner was also heard by the Chief Executive Officer, GMDA as can be seen in the order dated 28.07.2022, wherein it was directed that Sri Mrinmoy Baruah and Mrs. Dimpy Deka are directed under Section 88 of the GMDA Act, 1985 to dismantle the barrier/obstructions made at the entry and exit to the lift, in the

First Floor. They were directed to make it accessible to all as a common area, by dismantling all kinds of barrier/obstructions erected within 10 (ten) days from the date of receipt of the order dated 28.07.2022 and as per earlier order passed by the GMDA on 02.05.2022.

10. On perusing the application and the documents filed in I.A.(Civil) 783/2023 by the respondent Nos. 4 and 5, it is quite clear that the petitioner was aware of the complaint regarding unauthorised construction of the common area, thereby closing the entry and exit to the lift. The petitioner was also heard by the competent authority, prior to issuing the impugned order for demolishing the unauthorised construction. It is also seen that the petitioner has made a reply dated 18.08.2021 to the Show Cause Notice dated 10.08.2021 issued to the writ petitioner under Sections 87 and 88 of the GMDA Act, 1985. The above being said, the petitioner has been playing hide and seek with this Court, inasmuch as, documents submitted by the respondent Nos. 4 and 5 clearly show that the petitioner was heard prior to issuance of the impugned order.

11. In view of the above facts, it is clear that there has been no violation of the principles of natural justice. Therefore, the writ petition being devoid of any merit is hereby dismissed.

12. The interim order passed earlier stands vacated.

**JUDGE**

**Comparing Assistant**