

GAHC010255392014



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

Case No. : WP(C)/4767/2014

MOSADDIQUE ULLAH and 5 ORS
S/O- LT. SALAMAL ULLAH, R/O- BACKSIDE OF PRAGJYOTISH COLLEGE,
SANTIPUR, GHY- 9.

2: PROMOD PATHAK
S/O- LT. RAJENDRA NATH PATHAK
R/O- BISNUPUR MAIN ROAD
HOUSE NO. 61
GHY- 16.

3: MD. ZAMIRUDDIN
S/O- LT. UMARUDDIN
R/O- M.S. ROAD
HOUSE NO. 64
ATHGAON
GHY- 1.

4: GAUTAM DAS
S/O- LT. MADHU SHUDHAN DAS
R/O- HOUSE NO. 54
FAKIRTALA
ATHGAON
GHY- 1.

5: BHUPESH SHARMA
S/O- LT. JOGENDRA NATH SHARMA
R/O- RUPNAGAR
KUMARPARA
RLY-GATE NO. 7
GHY- 9.

6: ROBIN CH. DEKA
S/O- LT. KANTI RAM DEKA
R/O- KALIRAM CHOUDHURY ROAD

HOUSE NO. 10
KUMARPARA
GHY- 9

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE SECY. TO THE GOVT. OF ASSAM, MUNICIPAL
ADMINISTRATION DEPTT., DISPUR, GHY- 6.

2:THE GUWAHATI MUNICIPAL CORPORATION
REP. BY THE COMMISSIONER
GHY- 1.

3:STANDING ASSESSMENT MARKET TRADE COMMITTEE
GUWAHATI MUNICIPAL CORPORATION
GHY- 1.

4:M/S FANCY BAZAR GROUP OF TRADERS
REGISTERED OFFICE IN FATASHIL AMBARI
P.S.- FATASHIL
DIST.- KAMRUP M.

5:FANCY BAZAR MMD ASSOCIATION
FANCY BAZAR
GHY- 1.

6:M/S GREATER GUWAHATI RETAIL FRUIT ASSOCIATION
FANCY BAZAR DEWAN PATTY ROAD
GHY- 1

Advocate for the Petitioners : Mr. P. Kataki, Advocate

Advocate for the Respondents : Mr. K. Baruah, Advocate
: Mr. S. Borah, Advocate

Linked Case : WP(C)/678/2015

FANCY BAZAR GUROUP OF TRADERS
REGISTERED OFFICE AT FATASHIL AMBARI
P.O. and P.S.- FATASHIL

GHY- 25
DIST.- KAMRUP M
ASSAM.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM
MUNICIPAL ADMINISTRATION DEPTT.
DISPUR
GHY- 6.

2:THE GUWAHATI MUNICIPAL CORPORATION
GUWAHATI
PIN- 781001.

3:THE COMMISSIONER
GUWAHATI MUNICIPAL CORPORATION
GUWAHATI
PIN- 781001.

4:THE STANDING ASSTT. MARKET and TRADE COMMITTEE
GUWAHATI MUNICIPAL CORPORATION
GUWAHATI
PIN- 781001.

Advocate for the Petitioners : Mr. K. Baruah, Advocate

Advocate for the Respondents : Mr. S. Borah, Advocate

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT AND ORDER (ORAL)

Date : 18-07-2023

1. As both the writ petitions are inter-connected, the same are taken up for disposal vide this common judgment and order.
2. The Petitioners in WP(C) No.4767/2014 are allottees of the Fancy Bazar,

Guwahati Municipal Market and are engaged in various businesses including vegetable items, stationary items, puja items, decorative items etc. The grievance of the Petitioners in WP(C) No.4767/2014 is that the Respondent Authorities i.e. the Guwahati Municipal Corporation are not strictly complying with the directions passed by this Court in the order dated 18.09.2007 passed in WP(C) No.2254/2007, the order dated 05.12.2012 in WP(C) No.5390/2012 as well as the order dated 05.06.2014 in Contempt Case (C) No. 103/2013.

3. It is relevant herein to take note of that WP(C) No.2254/2007 was filed by an association wherein the Petitioners in WP(C) No.4767/2014 are members. The said writ petition was disposed of vide a judgment and order dated 18.09.2007 thereby directing the Guwahati Municipal Corporation to the effect that while making allotment to the 60 selected applicants, the Guwahati Municipal Corporation will not go beyond the space which the resolution dated 17.12.2004 permits.

4. It further appears that pursuant to the said order dated 18.09.2007, a writ petition was filed by the Petitioners in WP(C) No.678/2015 which was registered and numbered as WP(C) No.5390/2012. The said writ petition was disposed of thereby directing inter alia that the members of the Petitioner association i.e. the Fancy Bazar Group of Traders shall continue to occupy the space that was allotted to them strictly adhering to the terms and conditions stipulated in the order of allotment; that the members of the association i.e. Fancy Bazar Group of Traders would not use the allotted space other than the purpose for which the same has been allotted to them and in case of any deviation from the terms and conditions specified in the orders of allotment, the GMC authority would be at liberty to take appropriate action in accordance

with law.

5. Pursuant thereto, the Fancy Bazar Group of Traders filed a contempt proceedings before this Court which was registered and numbered as Contempt Case (C) No.103/2013. The said contempt proceedings was disposed of vide an order dated 05.06.2014 thereby extending the period fixed in the order dated 05.12.2012 for its implementation by a further period of 3 (three) months from the date of the said order as an outer limit provided no appeal was filed by the Respondents and no stay is obtained to the order impugned therein.

6. It is further the case of the Petitioners in WP(C) No.4767/2014 that the Respondent Authorities although were bound by the order dated 05.12.2012 in WP(C) No.5390/2012 to only permit the members of the Fancy Bazar Group of Traders to carry on the business strictly to the terms and conditions stipulated in the order of allotment but the members of the Fancy Bazar Group of Traders are carrying on business beyond the terms and conditions stipulated in the order of allotment and are using the allotted space other than the purpose for which the same has been allotted to them.

7. It appears from the records that this Court had issued notice. The Respondent Nos. 2 and 3 had filed an affidavit-in-opposition on 26.03.2015 stating inter alia that in order to protect the livelihood of the vendors, ease traffic congestion, allow excess to the GMC market and to maintain pollution free environment within the market area, the Standing Assessment Market Trade Committee (S.A.M.T.C.) by a resolution No.4 dated 01.11.2004 resolved to accommodate the retailed fruit sellers and other hawkers in the surrounding open space area of Fancy Bazar Guwahati Municipal Corporation market. It was

further stated that the Standing Assessment Market Trade Committee (S.A.M.T.C.) vide another resolution dated 17.12.2004 resolved to allow only fruit vendors to occupy the space in the "L" pattern portion of one side along the inner railing side of the newly constructed Fancy Bazar Guwahati Municipal Corporation market. Pursuant to the resolution dated 17.12.2004, altogether 61 numbers of applications were received and upon interview, one application was rejected being tea stall owner. All the 60 selected fruit vendors' names were published on 21.04.2007 allotting space of 4' x 4' for selling only fruits.

8. It was further mentioned that in the meeting held between the Fancy Bazar Group of Traders on 24.07.2014 at the office chamber of the Collector, GMC, an undertaking dated 04.08.2014 was given by the said association to comply with all the terms and conditions of allotment order issued by the Corporation permitting use of space measuring 4' x 4' in the "L" pattern within the complex of Fancy Bazar Guwahati Municipal Corporation market. It was also mentioned in the affidavit-in-opposition that the Guwahati Municipal Corporation has kept strict vigil on the traders to ensure that the orders of this Court as well as the undertaking dated 04.08.2014 is strictly complied with. Further to that it has also been mentioned that on 22.08.2014, an eviction operation was undertaken by the Guwahati Municipal Corporation against those vendors violating the orders of this Court and undertaking dated 04.08.2014.

9. It is further relevant to take note of that the Fancy Bazar Group of Traders who is the Respondent No.4 in WP(C) No.4767/2014 has also filed an affidavit-in-opposition in the said writ petition. In the said affidavit-in-opposition, it was mentioned that the members of the said association have been carrying out the business of selling fruits. However, subsequently many

non allottee vendors of fruits as well as other commodities have forcefully occupied some of the open area and also constructed unauthorized sheds in the same line where the members of the said association had their allotted space. It was further mentioned that the several representations were submitted by the said Association before the Guwahati Municipal Corporation to remove the said unauthorized occupants from the said space. But the authority did nothing. It was further mentioned that on 20.10.2012 notice was issued by the Respondent No.2 to the members of the said Association directing to dismantle the unauthorized sheds and discontinue the unauthorized business and thereafter vide order dated 08.11.2012 had cancelled the orders of the allotment of the members of the said association. Pursuant thereto, WP(C) No.5390/2012 was filed challenging the said act of the Respondent No.2 and this Court vide order dated 05.12.2012 was pleased to set aside the aforesaid order dated 08.11.2012 and directed the Respondent Authorities to restore back to the members of the said Association, the space which was earlier allotted to them.

10. To the said affidavit-in-opposition filed by the Respondent No.4, an affidavit-in-reply was filed by the Petitioners.

11. Now, let this Court consider the case set out by the Petitioners in WP(C) No.678/2015 which was filed by the said Association i.e. Fancy Bazar Group of Traders wherein the grievances of the said Association is that there was a representation dated 29.12.2014 issued to the Commissioner, Guwahati Municipal Corporation for permitting them to deal with other allied fruit products and other items along with fruits so that they could maintain their livelihood. It is the non-consideration of the said representation which have

resulted in filing of the said writ petition being WP(C) No.678/2015.

12. To the said writ petition, an affidavit was filed by the Guwahati Municipal Corporation on 26.03.2015 wherein it has been mentioned that the members of Petitioner Association i.e. the Fancy Bazar Group of Traders have been allotted the space of 4' x 4' inside the "L" pattern only for the sale of fruits as per the resolution No.2 dated 17.12.2004 and that the Petitioner association had submitted an undertaking dated 04.08.2014 to comply with all the terms and conditions of allotment order issued by Corporation permitting use of the space measuring 4' x 4' in the "L" pattern within the complex of Fancy Bazar Guwahati Municipal Corporation market. It was further mentioned that the representation dated 29.12.2014 was still pending for consideration.

13. In the backdrop of the materials on record, let this Court take into account the submissions made by the learned counsels for the parties. Mr. P. Kataki, the learned counsel appearing on behalf of the Petitioners in WP(C) No.4767/2014 had submitted that the members of the Association i.e. Fancy Bazar Group of Traders are bound by the order dated 05.12.2012 passed in WP(C) No.5390/2012 to only carry on the business for the purpose for which the space have been allotted to them. The learned counsel submitted that if any other allied businesses are being carried out, this would affect the businesses of the Petitioners as the said Petitioners carry on businesses other than fruits.

14. Mr. S. Bora, the learned counsel appearing on behalf of the GMC on the other hand submitted that the GMC authorities are keeping strict vigil in terms with the order dated 05.12.2012 passed in WP(C) No.5390/2012 and thereby the GMC Authorities are not permitting the members of the Fancy Bazar Group

of Traders to carry on any other business other than fruits. He further drawn the attention of this Court that there is even an undertaking being given by the Fancy Bazar Group of Traders dated 04.08.2014 to the effect that they would not carry out any other business other than for the purpose of which the space have been allotted.

15. On the other hand, Mr. K. Baruah, the learned counsel appearing on behalf of the Fancy Bazar Group of Traders i.e. the Petitioner in WP(C) No.678/2015 had submitted that the members of the said Petitioner association are carrying on the business of fruits. He submitted that in view of the inaction of the GMC Authority in controlling the menace of unauthorized and illegal vendors who are doing similar business on the road side of fruits and other allied businesses, the entire business of the members of the Petitioner association have been affected and thereby the representation have been submitted so that the terms of allotment could be changed thereby permitting the members of the Petitioner association to carry out the business of fruits as well as allied fruit products and other items.

16. This Court made a specific query upon the learned counsel appearing on behalf of the GMC as to whether there is any other illegal vendors who are carrying on similar business to what the members of the Fancy Bazar Group of Traders are carrying on. The learned counsel appearing on behalf of the GMC with all fairness had submitted that there are certain illegal vendors who carry on such business however the GMC Authority have been taking appropriate steps from time to time. The learned counsel further submitted that GMC Authorities are taking regular action against those illegal vendors and would continue to take such measures so that the business prospects of the members

of the said association i.e. Fancy Bazar Group of Traders are not affected.

17. I have heard the learned counsels for the parties and given my anxious consideration to the matter. From the perusal of the materials on record as well as from the contentions, it transpires that the business of the members of the association i.e. the Fancy Bazar Group of Traders is confined to selling of fruits and the allotment of space have been granted only for selling of fruits. The order dated 05.12.2012 passed in WP(C) No.5390/2012 had also attained finality and as such the members of the association i.e. the Fancy Bazar Group of Traders cannot carry out any other business other than for the purpose for which the space has been allotted unless and until there is a change being made by the GMC Authority. This Court cannot also be unmindful of the fact that if illegal street vendors are allowed to carry on the business within the vicinity of the business being carried out by the Petitioners in both the writ petitions, their business prospects would suffer.

18. Under such circumstances, this Court directs the Respondent GMC Authorities to take appropriate steps so that the menace of the illegal street vendors within the vicinity of the Fancy Bazar Guwahati Municipal Market are taken care of by resorting to eviction drives on regular intervals so that the business prospects of the Petitioners in both the writ petition are not affected. This Court further observes that in the circumstances, the menace of illegal traders cannot be controlled by the GMC Authority, the representation dated 29.12.2014 which is still pending before the Commissioner, GMC shall be taken into consideration and the Commissioner of GMC is hereby directed to pass appropriate orders thereupon.

19. With above observations and directions, the both the writ petitions

stands disposed of.

20. Pending application if any, stands also disposed of.

JUDGE

Comparing Assistant