

GAHC010257142022



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

Case No. : WP(C)/8085/2022

SHIW NATH SINGH
SON OF LATE BANARASI SINGH, PERMANENT RESIDENT OF SBI COLONY,
MANAV KALYAN ROAD,
TINSUKIA, DISTRICT- TINSUKIA,
PIN- 786125.

VERSUS

STATE OF ASSAM AND 7 ORS
REPRESENTED BY THE URBAN DEVELOPMENT DEPARTMENT,
GOVERNMENT OF ASSAM,
JANATA BHAWAN, 1ST FLOOR D-BLOCK,
DISPUR, GUWAHATI- 781006,
KAMRUP(M), ASSAM.

2:TINSUKIA MUNICIPAL BOARD
GOVERNMENT OF ASSAM

REPRESENTED BY ITS CHAIRMAN
GNB ROAD
TINSUKIA

DISTRICT- TINSUKIA
PIN- 786125
ASSAM.

3:THE EXECUTIVE OFFICER
TINSUKIA MUNICIPAL BOARD
GOVERNMENT OF ASSAM

GNB ROAD
TINSUKIA

DISTRICT- TINSUKIA
PIN- 786125
ASSAM.

4:TINSUKIA DEVELOPMENT AUTHORITY
REPRESENTED BY ITS PRESIDENT
CHALIA NAGAR

TINSUKIA
PIN- 786125.

5:THE DEPUTY COMMISSIONER
TINSUKIA
OFFICER OF THE DEPUTY COMMISSIONER
GOVERNMENT OF ASSAM

TINSUKIA
PIN- 786125.

6:RISHU KALANTRI
SON OF SRI RAJESH KALANTRI

SBI COLONY
MANAV KALYAN ROAD

TINSUKIA
PIN- 786125.

7:THE CIRCLE OFFICER
TINSUKIA REVENUE CIRCLE
TINSUKIA
PIN- 786125.

8:THE ASSISTANT ENGINEER
TINSUKIA MUNICIPAL BOARD
GOVERNMENT OF ASSAM

GNB ROAD
TINSUKIA

DISTRICT- TINSUKIA

PIN- 786125
ASSAM

Advocate for the Petitioner : MR. M MORE

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

ORDER

23.01.2023

Heard Shri PK Sharma, learned counsel for the petitioner. Also heard Ms. M. Barman, learned State Counsel for the respondent nos. 1, 3, 4, 5, 7 & 8 and Shri S. Chamaria, learned counsel for the respondent no. 6.

2. In this writ petition, a challenge has been made to a notice dated 01.12.2022 issued by the Tinsukia Municipal Board as well as Field Verification Report dated 29.03.2022. By the said notice, the Board has directed demolition of a part of the constructions of the petitioner.

3. There is a chequered history of this case. Initially, the respondent no. 6 had lodged a complaint against deviation made in the construction by the present petitioner. As no action was taken by the Tinsukia Municipal Board, a writ petition was instituted before this Court by the said respondent no. 6 which was numbered as WP(C)/227/2022. In the said writ petition, the present writ petitioner who was arrayed as the respondent no. 5 had entered appearance. However, there was continuous default on the part of the respondent no. 5 in appearing through counsel, though the names of the learned counsel were reflected in the cause-list. Under those circumstances, this Court had disposed of the earlier writ petition being WP(C)/227/2022 vide an order dated 31.10.2022. This Court had directed that the complaint of the petitioner be looked into in accordance with law and had also referred to a Field Verification Report dated 29.03.2022 as per which, the deviations were apparent. The writ petition was accordingly disposed of with the aforesaid direction.

4. Pursuant to the said order passed by this Court, the present notice dated 01.12.2022 has been issued. The notice having emanated from the order of this Court, this Court is of a considered view that interference with the said notice would be a mechanical approach. In fact, an application for review of the earlier order which was registered as Review.Pet/11/2023 has been rejected by this Court, vide an order passed today i.e. 23.01.2023.

5. This Court has also noticed while this writ petition was moved, an order was passed on 20.12.2022 wherein a similar observation was made and only to the extent that the petitioner be given an opportunity either to prefer an appeal or a review, an interim protection was granted.

6. As observed above, this Court is of the unhesitant opinion that since the basis of the demolition notice is an order of this Court which is still intact; this Court is of the opinion that the present writ petition does not have legs to stand. However, not to cause any prejudice to any of the parties, the interim order passed on 20.12.2022 shall remain operative till 31.01.2023, by which time, the writ petitioner, if so advised, may prefer an appeal against the earlier order dated 31.10.2022.

7. The writ petition accordingly stands disposed of.

JUDGE

Comparing Assistant