

GAHC010258652013



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

Case No. : WP(C)/1822/2013

K. NAIDU and 29 ORS.
S/O- LT. PAIT RAJU.

2: K. DEVI
D/O- LT. TATARAM.

3: K.K. LAXMI
W/O- SHRI K. APPARAO.

4: SMTI. CH. DEVI
W/O- SHRI K. SRINIVAS RAO.

5: P. EASRAMA
W/O- SRI APPRAO NO. 1.

6: SRI APPARAO
S/O- LT. RAMALU.

7: LALITA KUMARI
W/O- SHRI APPARAO NO. 2 B.

8: S. APPALAMA
W/O- LT. S RAMU.

9: BIMALA BALMIKI
W/O- LT. KAMAKHYA BALMIKI.

10: M. KAMAMMA
W/O- SHRI ACHIBABU.

11: BHUWALI DAS
S/O-THOKA DAS.

12: RAMAYAN ROWT

S/O- LT. S. ROWT.

13: SUMITA DEVI
W/O- SHRI DWARIKA SAH.

14: S. APPARAO NO. 3
S/O- LT. S. VENKATASWAMI.

15: MS. MINAKSHI
REP. BY HER MOTHER AND NATURAL GUARDIAN SMTI STYAVATI W/O- K.
RAJU.

16: RAMALU NO. 2
S/O- LT. POTHURAJU.

17: SMTI. CH. VENKATAMA
W/O- CH. APPARAO.

18: SRI GARESHU
S/O- LT. AMMATALLI.

19: P. NARSINGH RAO
S/O- APPARAO.

20: M. CHINNA
W/O- M. RAJU.

21: Y. GOVINDA
S/O- Y. SANYASI.

22: B. NAKRAJU
S/O- LT. SIMACHALAM.

23: K. KAMARAJU
S/O- SRI K. MAHALAXMI.

24: G. APPARAO
S/O- LT. G. APPARAO.

25: D. DURAGALMA
W/O- LT. RAJA RAO.

26: D. NAKALMA
W/O- LT. D. APPARAO.

27: SHIVPUJAN KUMAR SAH
S/O- MAKESHWAR SAH.

28: MAHESH SHAH
S/O- LT. MAHADEO SAH.

29: Y. APPALANARASA
W/O- E. RAJU.

30: M. SREENU
S/O- SRI NAGARAJU
ALL ARE R/O- FATASIL GMC NEW HARIJAN COLONY'
FATASIL
GHY- 9
DIST.- KAMRUP M

VERSUS

THE UNION OF INDIA and 7 ORS.
REP. BY THE SECY., MINISTRY OF URBAN DEVELOPMENT, NEW DELHI.

2:THE SECRETARY
MINISTRY OF URBAN DEVELOPMENT AND POVERTY ALLEVIATION
NEW DELHI.

3:THE STATE OF ASSAM
REP. BY ITS COMMISSIONER and SECY.
GUWAHATI DEVELOPMENT DEPTT.
GOVT. OF ASSAM
DISPUR
GHY- 6.

4:THE GUWAHATI MUNICIPAL CORPORATION
REP. BY ITS COMMISSIONER
PANBAZAR
GHY- 1
KAMRUP
ASSAM.

5:THE COMMISSIONER
GUWAHATI MUNICIPAL CORPORATION
PANBAZAR
GHY- 1
KAMRUP
ASSAM.

6:THE ADDL. COMMISSIONER
GUWAHATI MUNICIPAL CORPORATION
PANBAZAR
GHY- 1
KAMRUP

ASSAM.

7:THE OSD
JNNRUM CELL
GUWAHATI MUNICIPAL CORPORATION
PANBAZAR
GHY- 1.

8:THE PROJECT ENGINEER
BSUP PROJECT SITE- FATASIL
GHY- 9

Linked Case : WP(C)/1265/2015

POLICE BHAGAT
S/O LT. AJAY BHAGAT R/O FATASIL GMC NEW HARIJAN COLONY
FATASIL
GUWAHATI-9
DIST. KAMRUP M
ASSAM.

VERSUS

THE UNION OF INDIA and 7 ORS
REP. BY THE SECRETARY
MINISTRY OF URBAN DEVELOPMENT DEPARTMENT
NEW DELHI.

2:THE SECRETARY
MINISTRY OF URBAN EMPLOYMENT AND POVERTY ALLEVIATION
NEW DELHI.

3:THE STATE OF ASSAM

REP. BY ITS COMMISSIONER and SECRETARY TO THE GOVT. OF ASSAM
GUWAHATI DEVELOPMENT DEPARTMENT
DISPUR
GUWAHATI-6.

4:THE GUWAHATI MUNICIPAL CORPORATION
REP. BY ITS COMMISSIONER
PANBAZAR
GUWAHATI-1
DIST. KAMRUP M
ASSAM.

5:THE COMMISSIONER
GUWAHATI MUNICIPAL CORPORATION

PANBAZAR
GUWAHATI-1
DIST. KAMRUP M
ASSAM.
6:THE ADDITIONAL COMMISSIONER
GUWAHATI MUNICIPAL CORPORATION
PANBAZAR
GUWAHATI-1. DIST. KAMRUP M
ASSAM.
7:THE O.S.D. JNNRUM CELL

GUWHATI MUNICIPAL CORPORATION
PANBAZAR
GUWAHATI-1
DIST. KAMRUP M
ASSAM.
8:THE PROJECT ENGINEER

BSUP PROJECT
SITE FATASIL
GUWAHATI-9.

Linked Case : WP(C)/3185/2019

KARRI BABU RAO AND ANR.
S/O- LT PARIPALLI KARRI
R/O- FATASIL AMBARI
NEW GMC COLONY
GHY- 25

2: SMTI NARSAMA MADRAJI
W/O LATE P. DAS
R/O FATASHIL AMBARI
NEW GMC COLONY
GUWAHATI-781025
VERSUS

THE COMMISSIONER
GUWAHATI MUNICIPAL CORPN. AND 2 ORS.
PANBAZAR
GHY-1

2:THE GUWAHATI MUNICIPAL CORPORATION
REPRESENTED BY ITS COMMISSIONER
PANBAZAR
GUWAHATI-1

3:THE STATE OF ASSAM
REPRESENTED BY ITS COMMISSIONER AND SECRETARY
GUWAHATI DEVELOPMENT DEPARTMENT
GOVT OF ASSAM
DISPUR
GUWAHATI-6

For the Petitioner(s) : Mr. S. P. Roy, Sr. Advocate
: Mr. A. Dasgupta, Advocate

For the Respondent(s) : Mr. S. Bora, SC, GMC

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

Date : 03-10-2023

1. The three writ petitions are taken up for disposal by this common judgment and order.

2. The facts involved in the three writ petitions relates to a project in the name of Jawaharlal Nehru National Urban Renewal Mission (JNNURM). The said project was initiated taking into account the 2001 population census wherein 285.35 million people were mentioned as residing in urban areas which constituted 27.8% of the total population. As per the said population census while the population in India increased 3 times, the urban population had grown 5 times and the rising urban population had given rise to a number of urban poor. As per the 2001 estimates, the slum population was estimated at 31.3 million. It is under such circumstances, the said project i.e. Jawaharlal Nehru National Urban Renewal Mission was initiated which is called the Basic Service to Urban Poor to cope up with the massive problems that had emerged

as a result of rapid urban growth for the purpose of providing Basic Service to the Urban Poor. The Petitioners in all the three writ petitions were living in the GMC quarters situated at Fatasil GMC New Harijan Colony. For the purpose of giving effect to the project i.e. Jawaharlal Nehru National Urban Renewal Mission, the Respondents in the writ petitions had asked the residents including the Petitioners to vacate their earlier house/quarters situated at Harijan Colony with a view to providing them suitable and improved housing as per the mission.

3. From the pleadings, it transpires that the Fatasil GMC New Harijan Colony was divided into three Zones i.e. Zone-A, Zone-B and Zone-C. The Petitioners herein were asked by the Respondents to vacate their quarters so that those quarters could be demolished and thereupon new quarters could be built which would be allotted to the Petitioners and others. Accordingly, as per the directions, the Petitioners vacated the quarters and thereupon the said quarters were demolished.

4. In WP(C) No.1822/2013, there are 30 writ petitioners. From a perusal of the materials on records, it would reveal that the Petitioner Nos. 1 to 24 were issued certain allotment letters for new quarters. However, as regards the Petitioner Nos. 25 to 30, they were issued a notice/allotment (subject to verification) intimating that pursuant to vacation of their quarters, they would be considered for allotment.

5. In WP(C) No.1265/2015, it is seen that the said writ petitioner was issued an allotment letter.

6. In the case of the two writ petitioners i.e. in WP(C) No.3185/2019, it is

seen that the said two writ petitioners were issued allotment letters and they had also paid their dues which the Respondent Authorities had received.

7. A further perusal of the writ petitions would show that in the case of the writ petitioner Nos. 1 to 9 in WP(C) No.1822/2013 as well as the Petitioner in WP(C) No.1265/2015, the said Petitioners are aggrieved by the cancellation of their allotments vide the impugned order dated 21.09.2012. As regards the Petitioner Nos. 10 to 24 in WP(C) No.1822/2013, the said Petitioners are aggrieved at the action on the part of the Respondent Authorities in wait listing them for allotments in spite of valid allotments letters. In respect to the petitioner Nos. 25 to 30 in WP(C) No.1822/2013, it is the case of these Petitioners that they were in occupation of their respective quarters earlier and they vacated the quarters on the assurance that they would be handed over new quarters and thereupon, no new quarters have been allotted to them till date. The grievance of the two writ petitioners in WP(C) No.3185/2019 is that the allotments have been duly made but for reasons best known, the possession have not been handed over.

8. From a perusal of the records, it is apparent that this Court vide an order dated 05.04.2013 issued notice and in the meanwhile restrained the Respondents from making any further allotment of new housing units to persons other than the original allottees. The said interim order thereupon has been continuing till date. It reveals that the Respondent Nos. 4, 5, 6, 7 and 8 have filed an affidavit-in-opposition. From the said affidavit-in-opposition, it reveals that out of the 352 beneficiaries, 83 beneficiaries have been left out and possession has already been given to 269 beneficiaries. It was found on scrutiny that out of the list of 83 beneficiaries, 11 names were found to be

already dropped during the publishing of the list due to objection from the general public and the Harijan Mazdoor Union. Out of the remaining 72 cases, 26 (including fire victim cases) cases have been considered for allotment after verification of documents and discussions with the BSVC. Two cases are kept pending for further verifications. 23 cases are kept in the waiting list for consideration of allotment after completion of the dwelling unit in Zone-C. Claims of 28 numbers of cases are cancelled by the house after discussion with the reasons shown against individual claims.

9. During the course of the hearing, Mr. S. Bora, the learned Standing counsel appearing on behalf of the GMC submits that taking into account that there are 33 writ petitioners in the instant proceedings, 33 flats have been kept aside and there has been no allotment made in respect to those 33 flats. He however submits that temporarily in those 33 flats certain fire victims have been allowed to reside and those families who are residing in the 33 flats have given undertakings that they would vacate immediately upon the decision taken in the present writ proceedings.

10. The case of the Petitioner Nos. 1 to 9 in WP(C) No.1822/2013 as well as the writ petitioner in WP(C) No.1265/2015 are that the allotment which have been duly made in their favour have been cancelled without giving any opportunity of hearing to the said petitioners. This very aspect of the matter has not been denied by the Respondent GMC. Taking into account that the allotment orders which have been passed in favour of the Petitioners creates a right upon the Petitioner Nos. 1 to 9 in WP(C) No.1822/2013 and the petitioner in WP(C) No.1265/2015 and cancelling the said allotment ensues civil consequences, it is the opinion of this Court that without giving any

opportunity of hearing to the said Petitioners amounts to violation of principles of natural justice and administrative fair play and consequently would violate Article 14 of the Constitution. Under such circumstances, this Court therefore sets aside the order dated 21.09.2012 insofar as the allotments of the Petitioner Nos. 1 to 9 in WP(C) No.1822/2013 and the petitioner in WP(C) No.1265/2015 have been cancelled.

11. Now let this Court take into account the case of the other Petitioners. The Petitioner Nos. 10 to 24 in WP(C) No.1822/2013 as well as the Petitioners in WP(C) No.3185/2019 have been given allotment as far back as in the year 2011. This Court made a specific query upon Mr. S. Bora, the learned Standing counsel appearing on behalf of the GMC as to why the said Petitioners have not been given the possession. The learned Standing counsel submitted that in respect to the Petitioner Nos. 10 to 24 in WP(C) No.1822/2013, they have been put in the waiting list for the reasons stated in remarks of the order dated 21.09.2012 and this aspect would require certain verifications. The learned counsel however submits that in respect to the Petitioners in WP(C) No.3185/2019, the said petitioners have not been handed over the possession in view of the pendency of the writ petitions. He further submits that the allotment fees have also been taken in respect to the Petitioners in WP(C) No.3185/2019.

12. The above answer to the query so made by this Court shows that the Petitioner Nos. 10 to 24 in WP(C) No.1822/2013 are not similarly situated with the Petitioners in WP(C) No.3185/2019. It has been submitted by Mr. S. Bora, the learned Standing counsel that the Petitioner Nos. 10 to 24 in WP(C) No.1822/2013 have been kept in the waiting list for the purpose of making

further verifications. It is the opinion of this Court that the verifications cannot be permitted to continue endlessly taking into account that the said Petitioners i.e Petitioner Nos. 10 to 24 of WP(C) No.1822/2013 had vacated their earlier quarters and on the basis thereof, the said Petitioners have been issued allotment letters.

13. Further to the above, in respect to the Petitioners in WP(C) No.3185/2019, it is seen that these Petitioners have not been handed over possession only on the ground of the pendency of the WP(C) No.1822/2013 and WP(C) No.1265/2015.

14. Now, coming to the question as regards the right of the Petitioner Nos. 25 to 30 in WP(C) No.1822/2013, the said Petitioners though have not yet been issued any allotment letters but they were asked to vacate with an assurance that upon vacating their quarters, there would be allotment of flats. It is the case of the Petitioners that they had vacated their quarters and thereupon they are therefore entitled to allotment. It is the opinion of this Court that if the Petitioner Nos.25 to 30 in WP(C) No.1822/2013 have vacated their earlier quarters pursuant to the notice enclosed as Annexure 28 to 32, they should be considered for allotment and possession of the flats in question, if permissible as per the Scheme.

15. Under such circumstances, this Court therefore disposes of the instant writ petitions with the following observations and directions.

(i) The impugned order dated 21.09.2012 by which the allotments of the Petitioner Nos. 1 to 9 in WP(C) No.1822/2013 and the allotment of the Petitioner in WP(C) No.1265/2015 were cancelled are hereby set aside on the

ground of violation of principles of natural justice. It is made clear that the setting aside of the order dated 21.09.2012 is only to the extent of cancellation of the allotment of the Petitioner Nos. 1 to 9 in WP(C) No.1822/2013 and the Petitioner in WP(C) No.1265/2015. The Respondent Authorities are however given the liberty to take appropriate steps against the allotments of the Petitioner Nos. 1 to 9 in WP(C) No.1822/2013 and the Petitioner in WP(C) No.1265/2015 by issuing notice to the said Petitioners and giving them an opportunity of hearing.

(ii) The Petitioner Nos. 10 to 24 in WP(C) No.1822/2013 cannot be made to wait for eternity in the waiting list taking into account that they have vacated their quarters with a hope that pursuant to the allotment made, they would be allotted fresh flats as per the scheme. The Respondent Authorities therefore are directed to take appropriate decision as regards the allotments in respect to the said Petitioners i.e. Petitioner Nos. 10 to 24 in WP(C) No.1822/2013 and the same be completed within a period of 3 (three) months from today. It is further directed that if the Respondent Authorities take any decision adversarial to the Petitioner Nos. 10 to 24 in WP(C) No.1822/2013, the Respondent Authorities shall provide an opportunity of hearing to such Petitioners.

(iii) As regards the Petitioner Nos. 25 to 30 in WP(C) No.1822/2013, the said Petitioners also have a right to be considered for allotment taking into account they had vacated their earlier quarters in pursuance to the allotment order (subject to verification) which have been enclosed as Annexure-28 to 32 to the writ petition. The Respondent Authorities are therefore directed to consider their case within an outer limit of 3 (three) months from the date of the instant order. It is made clear that if any decision is taken against the said Petitioners,

the Respondent Authorities shall afford an opportunity of hearing to the said Petitioners.

(iv) As regards the Petitioners in WP(C) No.3185/2019, as the said writ petitioners have already been deposited their amount and the only reason why the possession have not been handed over is on account of the pendency of the instant writ petitions which stands culminated with the passing of the instant judgment and order, the Respondent Authorities are directed to handover the possession of the flats to the Petitioners in WP(C) No.3185/2019 at the earliest and not later than 60 days.

JUDGE

Comparing Assistant