

GAHC010267092023



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

Case No. : Cont.Cas(C)/722/2023

AJIT MALLICK
S/O- LATE JOGESH CH. MALLICK R/O- LANKA ROAD, D.C. SARANI NORTH
LUMDING, WARD NO. 03, P.O. AND P.S. LUMDING, DIST.- HOJAI, ASSAM

VERSUS

SWASTIKA RAUT MAJUMADAR
THE CHAIRPERSON OF LUMDING MUNICIPAL BOARD, LUMDING W/O-
LATE ASHU RANJAN RAUT, RESIDENT OF VILLAGE BMB SCHOOL ROAD,
HORIOMTILA, WARD NO.8, P.O. LUMDING, DIST.- NAGAON, PIN- 782447

For the Petitioner(s) : Mr. N. K. Kalita, Advocate

For the Respondent(s) : None Appears.

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 19.12.2023

1. The instant contempt application has been filed by the Petitioner alleging violation of the order dated 13.10.2023 passed in WP(C) No.6060/2023 by the Chairman of the Lumding Municipal Board.

2. A perusal of the said order dated 13.10.2023 passed in WP(C) No.6060/2023 shows that this Court had observed that the dispute between the Petitioner and the Private Respondent in the said writ proceedings was a private dispute pertaining to immovable property and ordinarily such disputes should be resolved before the Civil Court. However, this Court taking into consideration the submission made to the effect that if the constructions have been carried out without permission, the Lumding Municipal Board would have the authority to look into the same. It was also made it very clear that if the construction is made without proper authorization or NOC from the Municipal Board, then the Municipal Board would intervene in the matter. It was also observed that if the dispute was outside the ambit of construction permission/NOC then the dispute has to be adjudicated by the Civil Court.

3. Pursuant to the said order, the Petitioner submitted a copy of the said order to the Chairman, Lumding Municipal Board on 17.10.2023 alleging that the Private Respondent in the writ petition has been carrying out certain unauthorized construction in violation of the construction permission and as such sought for initiation of corrective measures. The same having not been done, the Petitioner therefore has approached this Court by filing the instant contempt application.

4. This Court upon hearing the learned counsel for the Petitioner is of the opinion that this is not a fit case for issuance of notice inasmuch as the order dated 13.10.2023 passed in WP(C) No.6060/2023 as it stands directs the Respondent No.3 to intervene if and only if the construction was carried out without authorization or NOC from the Municipal Board. It was also observed that if the dispute is outside, the ambit of the construction permission/NOC, then the dispute would have to be adjudicated by the Civil Court.

5. From a perusal of the communication dated 17.10.2023, it reveals that the dispute in question is not a dispute pertaining to raising of construction without the construction permit/NOC but the disputes revolves around as regards the construction being carried out beyond the permission as alleged. Therefore taking into account the directions passed by this Court on 13.10.2023, it is the opinion of this Court that the Respondent Municipal Authority could not have entered into the private dispute between the Petitioner and the Private Respondent in the writ petition and the same therefore has to be adjudicated before the Civil Court.

6. Under such circumstances, this Court finds no reason for issuance of notice as prima facie there is no willful or deliberate violation by the Respondent. It is under such circumstances, the instant contempt application therefore stands closed however liberty is given to the Petitioner to approach the Civil Court for redressal of his grievances.

JUDGE

Comparing Assistant