

GAHC010051202022



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

Case No. : WP(C)/1910/2022

KRISHNA KANTA BHUYAN
S/O- KALARAM BHUYAN, SECRETARY, ALL ASSAM PRATIBANDHI PUNAR
SANSTHAPAN SANTHA, BISWANATH CHARIALI, BISWANATH, ASSAM,
PIN- 784176.

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY ITS SECRETARY TO THE GOVERNMENT OF ASSAM,
TOWN AND COUNTRY PLANNING DEPARTMENT, DISPUR, GUWAHATI,
ASSAM, PIN- 781006.

2:THE DEPUTY COMMISSIONER
BISWANATH
DIST. BISWANATH
ASSAM
PIN- 784176.

3:THE DIRECTOR MUNICIPAL ADMINISTRATION
ASSAM
DISPUR
GUWAHATI
PIN- 781006.

4:THE CHAIRMAN
BISWANATH DEVELOPMENT AUTHORITY
BISWANATH CHARIALI
DIST. BISWANATH
ASSAM
PIN- 784176.

5:THE EXECUTIVE OFFICER

BISWANATH DEVELOPMENT AUTHORITY
BISWANATH CHARIALI
DIST. BISWANATH
ASSAM
PIN- 784176.

6:THE CIRCLE OFFICER
BISWANATH REVENUE CIRCLE
BISWANATH CHARIALI
DIST. BISWANATH
ASSAM
PIN- 784176.

7:DINESH UPADHAYA
C/O- MOHAN PRADHAN
PRESENT RESIDENT OF BISHNUPUR GAON
C/O- MOHAN PRADHAN
BISWANATH CHARIALI
DIST. BISWANATH
ASSAM
PIN- 784176

Advocate for the Petitioner : MR. B BARUAH

Advocate for the Respondent : GA, ASSAM

BEFORE
THE HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY
ORDER

22.03.2024

1. Heard Mr. B. Baruah, learned Legal Aid Counsel representing the petitioner. Also heard Mr. Gopal, learned counsel for the respondent No. 4 and Mr. P. Das, learned counsel for the respondent No. 7.
2. The grievance of the petitioner is that the respondent No. 7 has constructed a building in violation of the building permission and slab of the building has been extended toward western boundary wall of the petitioner.

3. On the basis a complaint filed by the petitioner before the Deputy Commissioner, Biswanath Chariali, Deputy Commissioner, Biswanath Chariali by letter dated 03.09.2021 directed the respondent Development Board to take necessary action and to report. Accordingly, the Chairman, Biswanath Development Authority by its order dated 09.09.2021 reported to the Deputy Commissioner that the Site Engineer has visited the construction site and after physical investigation, found "some defects of the reinforcement of the roof slab and the site-in-charge has instructed the respondent No. 7 to rectify such defects of the reinforcement of the roof slab with immediate effect.
4. According to the petitioner nothing has been done in this regard till date even after such report and the construction is illegal and non compoundable.
5. The facts remains that the petitioner is the secretary of All Assam Pratibandha Punar Sansthan Santha has lodged a complaint before the Deputy Commissioner alleging that the respondent No. 7 constructed a roof of the RCC house entering the boundary of the land belonging to the Santha and in the result vegetables belonging to the nursery of the petitioner has been damaged. On the basis of such letter, the Deputy Commissioner requested the Chairman of the Development Committee to do the needful and report compliance as discussed hereinabove.
6. The respondent No. 7 submits that he has constructed the building as per Building Bye-Laws and the respondent/Chairman has taken a stand on affidavit that there was construction of 4.3 feet excess slab in the building, however, both the parties have compromised that reduction of 2 feet will suffice the cause. Such compromise has been denied by the petitioner and it is the contention of the petitioner that the construction is illegal and non compoundable.
7. In the aforesaid backdrop, this Court in exercise of power of judicial review will

not be in a position to decide who is right or who is wrong and whether there is any encroachment or whether there is any violation of the building permission.

8. The construction of building and building permissions are controlled by the Assam Municipal Act, 1956 and the construction of building and granting permission and the parameters thereof are guided by the By-Laws of the Assam Notified Urban Areas (Other than Guwahati) Building Rules, 2014. Prior to enactment of such By-Laws, no objection certificate for construction of building as well as the parameters and requirements including setback were guided and controlled by the By-Laws formulated under Assam Town and Country Planning Act, 1959.
9. As the parameters for construction of a building has already been laid down and it is the mandate of the law and it is the development authority who is to enforce such norms and parameters .It is the bounden duty of the Municipal Authority/Development Authority to ensure strict compliance of such Building By-Laws, and this Court is of the opinion that the dispute as has been raised by the petitioner should strictly be resolved in terms of the extant norms applicable to the present case.
10. Accordingly, the petitioner is given a liberty to file a fresh application before the Chairman of Biswanath Development Authority and on such application being filed, the Development Authority shall look into the complaint made by the petitioner and look into the issue whether the building has been construction on the basis of any No Objection Certificate issued under the extant norms and if so, whether the building has been constructed in terms of the By-Laws and / extant norms/NOC. In the event, it is found that the construction is in violation of NOC granted, the necessary action that should be taken in terms of the Act and By Laws framed thereunder. It is also clarified that necessary action will include demolition as well as compounding of such defects, if permissible under the

extant norms. Such exercise should be carried out within a period of six weeks from the date of filing of the appropriate application by the petitioner as provided herein above and such application be filed within 17th of April, 2024. While determining the complaint , the Chairman, Biswanath Development Authority/competent authority under the Board shall hear both the parties.

11. In the meantime and if such application is filed within 17th of April, 2024, till determination by the Development Authority it is directed that the respondent No. 7 shall stop the construction of the 1st floor.
12. This writ petition stands disposed of.

JUDGE

Comparing Assistant