

GAHC010054942024



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

**Case No. : WA/97/2024**

APURBA KUMAR HAZARIKA

S/O- LATE BANESWAR HAZARIKA, PRESENTLY RESIDING AT FLAT NO. 2D,  
C-D BLOCK, SUSRITA HILLSIDE, ZOO NARENGI ROAD, P.S. GEETANAGAR,  
OPPOSITE PROTECH HERITAGE, GUWAHATI-781023, KAMRUP(M), ASSAM,  
REPRESENTED BY HIS ATTORNEY SRI PAWAN KUMAR PIROJIWALA,  
PROPRIETOR, M/S YAKSHIT CONSTRUCTION, R/O- HOUSE NO. 33, M.A.  
ROAD, P.O. REHABARI, GHY-781008, KAMRUP(M), ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS  
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM,  
GUWAHATI DEVELOPMENT DEPARTMENT, DISPUR, GHY-6.

2:THE COMMISSIONER

GUWAHATI MUNICIPAL CORPORATION  
GHY-1.

3:THE ASSOCIATE PLANNER

GUWAHATI MUNICIPAL CORPORATION  
GUWAHATI-1

**Advocate for the Petitioner** : MR. S N TAMULI, MS P DEKA,MS. P K ZANNAT,MS. A  
BEGUM,MR. T J MAHANTA

**Advocate for the Respondent** : , SC, GMC

**BEFORE  
HONOURABLE THE CHIEF JUSTICE  
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

**ORDER**

**Date : 09.09.2024**  
**(Vijay Bishnoi, CJ)**

Heard the learned counsels appearing for the parties.

This writ appeal is filed by the appellant being aggrieved with the order, dated 07.02.2024, passed by the learned single Judge in WP(c)560/2024, whereby, the learned single Judge has refused to grant any interim stay in the writ petition.

The appellant has filed the said writ petition before the learned single Judge being aggrieved with the action of the authorities of the Guwahati Municipal Corporation(GMC) to direct the appellant to demolish the 5<sup>th</sup> and 6<sup>th</sup> Floors of the building, in question, as the same has been raised with necessary permission under the Rules and Bye-laws.

Learned counsel for the appellant has submitted that as a matter of fact, the 5<sup>th</sup> and 6<sup>th</sup> Floors constructed by the appellant over the plot of land is liable to be compoundable as it very well comes within the compoundable floor area ratio as provided under the Guwahati Building Construction Bye-laws, 2014.

It is stated by the learned counsel for the appellant that by now one of the brother of the appellant Shri Ranjit Hazarika, has already constructed his building on his share in the plot, has agreed to contribute his unutilized FAR towards the appellant and to consider his share in the plot jointly with the appellant. As such, now even if the share of Shri Pradip Hazarika, who is raising dispute in this case is eliminated out of the total land, the remaining land left will be 3 Kathas 0.66 Lechas i.e. 812.84 sq. mtrs. It is further submitted that as such, as per the Guwahati

Building Construction (Regulations) Bye Laws 2014, given the road width 8.80 Mtrs i.e. above 8 Mtrs and plot size 812.24 Sq. Mtrs, i.e., above 670 Sq. Mtrs., the maximum FAR available would be 1.75 (G+8). Hence, 5<sup>th</sup> and 6<sup>th</sup> floors constructed by the appellant can easily be adjusted against the available undisputed FAR of the joint land of two brothers namely Shri Apurba Kumar Hazarika and Shri Ranjit Hazarika.

On a pointed query, the learned counsel for the appellant has frankly admitted that no such plea was taken on behalf of the appellant before the learned single Judge when the matter was argued on 07.02.2024.

We are of the view that when the above plea has not even been raised on behalf of the appellant before the learned single Judge; we do not find any illegality in the impugned order passed by the learned single Judge. Hence, we do not find any force in this writ appeal and the same is, therefore, dismissed.

However, the appellant would be at liberty to raise a plea, which the learned counsel for the appellant has raised herein, before the learned Single Judge by moving an appropriate amendment application with liberty to request for an interim stay during the pendency of WP(C)560/2024.

**JUDGE**

**CHIEF JUSTICE**

**Comparing Assistant**