

GAHC010059712018



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

Case No. : WP(C)/1851/2018

ON THE DEATH OF MAZIBUR RAHMAN, HIS LEGAL HEIRS-
S/O- MD. MAFIZUR RAHMAN, R/O- KKB ROAD, CHENIKUTHI, P.S-
CHANDMARI, GUWAHATI-3, KAMRUP, ASSAM

1.1: REKHA RAHMAN (WIFE)
R/O K K B ROAD
CHENIKUTHI
HOUSE NO-32
DIST- KAMRUP (M)
GHY-3
ASSAM.

1.2: ALFRED RAHMAN (SON)
R/O K K B ROAD
CHENIKUTHI
HOUSE NO-32
DIST- KAMRUP (M)
GHY-3
ASSAM.

1.3: TANZIMHA YEASHEEN (DAUGHTER)
R/O K K B ROAD
CHENIKUTHI
HOUSE NO-32
DIST- KAMRUP (M)
GHY-3
ASSAM.

1.4: HISSER ALAM (DAUGHTER)
R/O K K B ROAD
CHENIKUTHI
HOUSE NO-32
DIST- KAMRUP (M)
GHY-3

ASSAM

VERSUS

THE GUWAHATI MUNICIPAL CORPORATION AND 2 ORS
REP. BY ITS COMMISSIONER, PANBAZAR, GUWAHATI-1, KAMRUP(M),
ASSAM

2:THE COMMISSIONER
GMC
PANBAZAR
GUWAHATI-1
KAMRUP(M)
ASSAM

3:THE ASSOCIATE PLANNER
GMC
PANBAZAR
GUWAHATI-1
KAMRUP(M)
ASSA

Advocate for the Petitioner : MR. S P ROY

Advocate for the Respondent : SC, GMC, H SARMA

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 11-03-2024

Heard Mr. S.P. Roy learned counsel for the petitioner. Also heard Mr. P Nayak learned standing counsel, Guwahati Municipal Corporation.

The challenge in this writ petition is a notice dated 19.03.2018 issued for and on behalf of the Commissioner, Guwahati Municipal Corporation under section 239 of the Guwahati Municipal Corporation, Act, 1971 in short (GMC Act, 1971).

Mr. Roy learned counsel for the petitioner submits that the impugned notice is without jurisdiction inasmuch as the allegation of construction of boundary wall over a storm water drain is not correct and in reality the petitioner had constructed a boundary near a road and that being the position, the notice under section 239 of the GMC Act, 1971 could not have been issued.

It is further contended by the learned counsel for the petitioner that he had already constructed a boundary wall over patta land after due permission and that being the position the municipal authority could not have issued notice to demolish the boundary wall.

Per contra, Mr. Nayak learned counsel for the respondent submits that the Guwahati Municipal Corporation has issued the notice in question on a background fact that the petitioner had carried out unauthorized construction over a storm water drain which was scheduled in the notice dated 19.03.2018. Therefore, such dispute whether there is a road or a storm water drain may not be decided by this court rather it is the GMC authority which should be allowed to exercise its power under the GMC Act, 1971 and the rules framed there under.

Mr. P Nayak learned counsel further contends that the NOC relied on by the petitioner is for the construction of a RCC ground floor and not for any construction of boundary wall.

It is correct that the GMC authority has issued a notice alleging unauthorized construction resulting in blockage of storm water drain and at the same time the petitioner has raised a dispute that there is no storm water drain and whatever construction is made,

it is made under the authority and permission of the Guwahati Municipal Corporation. In the aforesaid factual backdrop, this court has to decide whether it is a storm water drain or a road. Further it is also to be decided whether the permission granted is only for construction of a RCC building or such permission includes construction of RCC building along with boundary wall.

In the considered opinion, it is the Guwahati Municipal Corporation authority who is empowered to make such factual assertion under the GMC Act, 1971 and the rules framed there under and not this court in exercise of its power of judicial review.

Accordingly, this petition is disposed of with the direction that the petitioner may file a fresh representation before the Commissioner, Guwahati Municipal Corporation raising his grievance within a period of 15 days from today and on receipt of such representation, the commissioner shall consider the same and take a decision following due adherence of the Guwahati Municipal Corporation Act, 1971 and the rules framed thereunder within a period of two weeks thereafter.

Till such determination is made, the interim order of status quo shall continue.

JUDGE

Comparing Assistant