

GAHC010063772024



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

Case No. : WP(C)/1762/2024

JBL ELITE RESIDENCY FLAT OWNERS ASSOCIATION
SITUATED AT JBL ELITE RESIDENCY,
COLLEGE ROAD, SILCHAR- 788004, CACHAR, ASSAM,
REPRESENTED BY ITS PRESIDENT,
RAMA NANDA CHOUDHURY,
SON OF LATE RAMAPADA CHOUDHURY,
AGED 65 YEARS,
RESIDENT OF FLAT NO. 1F, 1ST FLOOR,
JBL ELITE RESIDENCY, COLLEGE ROAD,
SILCHAR- 788004, CACHAR, ASSAM.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM,
URBAN DEVELOPMENT DEPARTMENT,
DISPUR, GUWAHATI- 781006.

2:THE CHIEF EXECUTIVE OFFICER
CACHAR ZILLA PARISHAD
SILCHAR DISTRICT- CACHAR ASSAM.

3:THE CHAIRMAN
SILCHAR MUNICIPAL BOARD CACHAR SILCHAR.

4:THE EXECUTIVE OFFICER
SILCHAR MUNICIPAL BOARD CACHAR SILCHAR.

5:CHRISTO DAN ROY
SON OF LATE KESHAB CHANDRA ROY
RESIDENT OF COLLEGE ROAD
P.O. AND P.S.- SILCHAR DISTRICT- CACHAR ASSAM
PIN- 788004

Advocate for the Petitioner : MR. D CHAKRABARTY

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

Date : 08.05.2024

1. Heard Mr. D. Chakrabarty, learned counsel for the petitioner. Also heard Mr. G. Bokaliyal, learned counsel for the respondent No.1. No one appears for the other respondents.

2. The petitioner's grievance is that the respondent No. 5 has started a Paying Guest (PG) hostel in some of his flats, wherein the students have become a nuisance. He submits that the youths living in the flats of the respondent No.5 as paying guests, often indulged in drinking alcohol and behaving in an unruly manner, in a state of intoxication. This was not conducive to the homely atmosphere of the petitioner Society. Further the youths, who are living in the flats of the respondent No.5 organize parties and invite their friends, both male and female. They use slang and abusive language while talking amongst themselves. They also play cricket on the building terrace during the afternoon hours, which leads to disturbing the peace of the elderly members of the Society, residing on the top floor of the building. They make noise and play loud music while keeping their doors open.

3. The petitioner's counsel submits that the respondent No. 5 cannot run a

PG hostel in violation of the Assam Municipal Act, 1956. The petitioner Society had taken up the matter with the Silchar Municipal Board and vide order dated 16.10.2019, the Silchar Municipal Board had directed the respondent No.5 to stop the business of maintaining hostel in different flats of the building, failing which, legal action would be taken against him. The respondent No.5 thereafter filed an appeal before the Chief Executive Officer, Cachar Zilla Parishad, who allowed the appeal, vide order dated 22.01.2024, by holding that no person could be prevented from carrying on his occupation, trade or business, in terms of Article 19 (1)(b) of the Constitution. Further, the Silchar Municipal Board failed to show that any provision or any trade license was required for operating a Paying Guest accommodation. Further, if after an enquiry, it was found that the respondent No. 5 was required to have a trade license, the respondent No. 5 could apply for the same.

4. The petitioner has prayed for setting aside the impugned order dated 22.01.2024 issued by the Cachar Zilla Parishad on the ground that in terms of Section 284(1) of the Assam Municipal Corporation Act, 2022, the respondent No.5 could not allow any person to use his premises for any non residential purpose.

5. The petitioner's counsel submits that the Respondent No. 2 also seemed to be oblivious of the provisions of Section 219, 220, 221 and 222 of the Assam Municipal Act, 1956, which deal with nuisance as defined under Section 3(30) of the Assam Municipal Act, 1956 which include any act, omission, place or thing which causes or is likely to cause injury, danger, annoyance or offence to the sense of sight, smelling or hearing or which is or may be dangerous to life or

injurious to health or property. Section 220 empowers the Municipal Board to conduct inspection for removal or nuisance. Section 221 provides for notice to remove nuisance. Section 22 provides for complaints against nuisance. In the instant case, complaint was made by the Petitioner Society before Respondent No. 3 against the nuisance caused by the students who were accommodated in the Flats owned by Respondent No. 5 and his family members, which were converted into a Paying Guest facility.

6. Mr. G. Bokaliyal, learned counsel for the respondent No.1 submits that the students, who could be affected by the order of this Court have not been made parties to the writ petition and as such, they cannot be condemned unheard.

7. I have heard the learned counsels for the parties.

8. In the present case, there is nothing to show that any legal or fundamental right of the petitioner Society has been violated. Further, as can be seen from the contents of the writ petition, the petitioner Society has an alternative remedy, which can be availed of, if the persons occupying the flats of the respondent No. 5 become a nuisance and their acts are likely to cause injury or danger to the petitioner. However, the averments of the petitioner show that the behavior of the persons occupying the flats of the respondent No. 5 is not acceptable to the members of the petitioner Society. Be that as it may, just because some persons are not behaving as per the behavioral standards expected by the petitioner Society, does not mean that the behavior of the alleged students is illegal or in violation of the law.

9. Another important aspect of the case is that the decision made in the writ petition, on merit, could have a direct affect on the alleged students, who have rented the flats of the respondent No. 5 for residential purposes. As such, to decide the present writ petition in their absence would cause prejudice to the alleged students, as it would be in violation of the principles of natural justice. Further, as held by the Chief Executive Officer, Cachar Zilla Parishad, who has stated that Silchar Municipal Board failed to show any provision or that any trade licence was required for operating a Paying Guest facility, this Court is of the view that the impugned order dated 22.01.2024 passed by the CEO, Cachar Zilla Parishad cannot be interfered with at this stage.

10. The writ petition is accordingly dismissed.

JUDGE

Comparing Assistant