

GAHC010087412024



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

Case No. : WP(C)/2445/2024

SANGAM BARUA
S/O LATE DEVI PRASAD CHETRI @ BARUA AND LATE SOROJONI DEVI
BARUA, R/O HOUSE NO. 9, BARNACHAL ROAD, BAMUNIMAIDAN, P.O.-
BAMUNIMAIDAN, P.S.-CHANDMARI, DIST- KAMRUP (M), ASSAM, PIN-
781021

VERSUS

THE STATE OF ASSAM AND 7 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, MUNICIPAL ADMINISTRATION DEPARTMENT,
DISPUR, GUWAHATI-781006

2:THE GUWAHATI METROPOLITAN DEVELOPMENT AUTHORITY (GMDA)
BHANGAGARH
GUWAHATI-781005

3:THE CHIEF EXECUTIVE OFFICER
GUWAHATI METROPOLITAN DEVELOPMENT AUTHORITY
BHANGAGARH
GUWAHATI-5

4:THE TOWN PLANNER
GUWAHATI METROPOLITAN DEVELOPMENT AUTHORITY
BHANGAGARH
GUWAHATI-5

5:THE CHIEF EXECUTIVE ENGINEER
GUWAHATI METROPOLITAN DEVELOPMENT AUTHORITY
BHANGAGARH
GUWAHATI-5

6:THE OFFICER-IN-CHARGE
CHANDMARI POLICE STATION
CHANDMARI
GUWAHATI-781003

7:MRS. ARADHANA BARUAH
W/O INDREJIT SINGH
D/O LATE DEVI PRASAD CHETRI @ BARUA AND LATE SOROJANI DEVI
BARUA
R/O C/O INDRAJEET SINGH
R/O FLAT NO. 204
ABOVE SBI BUILDING
CHENIKUTHI BRANCH
P.S.-LATASIL
P.O.-UZANBAZAR
GUWAHATI-01
DIST- KAMRUP (M)
ASSAM

8:RAJNISH BARUA
S/O LATE DEVI PRASAD CHETRI @ BARUA AND LATE SOROJANI DEVI
BARUA
R/O HOUSE NO. 9
BARNACHAL ROAD
BAMUNIMAIDAN
P.O.-BAMUNIMAIDAN
P.S.-CHANDMARI
DIST- KAMRUP (M)
ASSAM
PIN-78102

Advocate for the Petitioner : MR T K DAS

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

ORDER

17.05.2024

Heard Mr. T.K. Das, learned counsel for the petitioner; Mr. S. Baruah, learned Junior Government Advocate, Assam for the respondent nos. 1 & 6; and Mr. S. Bora, learned

Standing Counsel, GMDA for the respondent nos. 2, 3, 4 & 5.

2. The petitioner has instituted the writ petition under Article 226 of the Constitution of India to assail an Order dated 18.03.2024 passed by the respondent no. 4. The proceeding which led to the passing of the Order dated 18.03.2024, was initiated on the basis of a complaint filed by the respondent no. 7. The complaint was with regard the following subject-matter – ‘Horizontal Extension of the Ground Floor of the existing old [G+1] RCC Building by constructing the A.T. House/Room’.

3. In the Order dated 18.03.2024 passed in exercise of the powers conferred under Section 88 of the Guwahati Metropolitan Development Authority Act, 1985 [‘the GMDA Act, 1985’], the respondent no. 5 has directed the petitioner to remove the unauthorized construction of the building, allegedly constructed by the petitioner in violation of the provision of the GMDA Act, 1985 and applicable Building Bye-Laws, within 10 [ten] days from the date of its communication. It has further observed that in the event of failure on the part of the petitioner to do so, the GMDA authorities would proceed for demolition of the unauthorized construction or sealing of the premises of the unauthorized construction.

4. In this writ petition, the petitioner has contended that the construction was made on the basis of a No Objection Certificate [NOC] issued earlier in the name of his mother and as such, such construction cannot be termed as unauthorized. On the other hand, contention of the respondent GMDA authorities are that the NOC was issued not in the name of the petitioner and the validity of the NOC had expired long back. The petitioner has also raised a contention that the alleged unauthorized construction was made in a part of the Building which does not fall in the share of the petitioner. Rather, the said part falls in the shares of the respondent nos. 7 & 8 and the notice/order should have been addressed to them. From the claims made by the petitioner and the counter claims made by the respondent GMDA authorities, it has become apparent that a number of disputed questions of fact would fall for consideration and for determination of such disputed questions of fact, a writ proceeding is not the proper and appropriate remedy.

5. From the provisions of the GMDA Act, 1985, it is found that the petitioner has an adequate and efficacious statutory remedy of filing an appeal against the Order dated 18.03.2024.

6. Chapter-VIII of the GMDA Act, 1985 contains Section 71, Section 72 and Section 73. For ready reference, Section 71, Section 72 and Section 73 are quoted hereinbelow :-

71. Appointment of the appellate authority.-

[1] Save as otherwise provided, the State Government shall appoint an appellate authority to hear all appeals arising out of the provisions of this Act. The decision of appellate authority shall be final.

[2] The person or persons appointed by the State Government as appellate authority shall have the qualification of a -District Judge, or of becoming a member of the Assam Board of Revenue constituted under the Assam Boards of Revenue Act, 1962, [Assam Act-XXI of 1962]. The appointment shall be on such terms and conditions as the State Government may decide.

72. Duties of the appellate authority.-

[1] The duties and powers of the appellate authority shall be as follows :-

[a] to hear and decide appeals against the orders of the Authority ;

[b] to decide and hear appeals in respect of such other matters and exercise such other powers as may be entrusted to and conferred upon it by the State Government in accordance with the provisions of this Act.

[2] All appeals to the appellate authority shall be filed within a month from the date of the order appealed against. The time required for taking out copies of the order shall be excluded. The appellate authority may, however, in its discretion condone such delay in filing appeal for sufficient reasons.

73. Procedure of working of the appellate authority.-

[1] The Appellate Authority shall conduct its proceedings in the prescribed manner after giving the opposite party or any one interested in the order appealed against and give opportunity of being heard.

[2] The appellate authority may, at any time call for any extract from any proceeding of the State Government or Authority and call for any return or statement or report concerning or connected

with any matter with which the Authority has been authorised to deal.

[3] The appellate authority shall have all the powers of a Civil Court for the purposes of taking evidence on oath or enforcing the attendance of witnesses including the parties interested or any of them and compelling the production of documents and material objection if considered necessary.

[4] The appellate authority in its discretion may make any orders regarding the cost to be paid by any of the parties to the proceeding' and the appellate authority shall have full power to determine by whom or out of what property and to what extent such costs are to be paid and the authority shall be bound to execute the orders of the appellate authority in accordance with the directions, if any, contained in the order and such costs or amounts awarded by the appellate authority shall be realised as arrears of land revenue.

7. By a Notification bearing no. GDD.49/94/Pt/44 dated 22.08.1996 issued under Section 71[2] of the GMDA Act, 1985, the State Government has designated the District & Sessions Judge, Kamrup, Guwahati as the Appellate Authority to decide appeals arising out of the provisions of the GMDA Act, 1985 with the approval of the Gauhati High Court. As the issues involve a number of disputed questions of facts which would require determination and consideration, the writ petition is not the proper and appropriate remedy. As the petitioner has an adequate and efficacious statutory remedy in the form of an appeal under the provisions of the GMDA Act, 1985, this writ petition is not entertained, reserving the liberty to the petitioner to prefer an appeal under the GMDA Act, 1985 before the designated Appellate Authority.

8. Mr. Das, learned counsel for the petitioner has submitted that as per sub-section 72[2] of the GMDA Act, 1985, an appeal is to be preferred within a month from the date of the order appealed against and the said period has already expired.

9. Under sub-section [2] of Section 72, the Appellate Authority has discretion to condone any delay in filing appeal for sufficient reasons. The instant writ petition was filed on 29.04.2024. The petitioner while preferring the appeal will also be at liberty to file an application seeking condonation of the period of delay which would occur in preferring the

appeal. It is observed that the Appellate Authority shall consider the period spent by the petitioner in pursuing the present writ petition from 29.04.2024 till date in the light of the provisions contained in Section 14 of the Limitation Act, 1963. Mr. Bora, learned Standing Counsel, GMDA has fairly submitted that there would not be any coercive action from the respondent authorities for a period of 21 [twenty-one] days. Taking note of the submission of Mr. Bora, it is further observed that if the petitioner prefers such an appeal within a period of 21 [twenty-one] days from today, the Appellate Authority shall consider the prayer for condonation of delay in an expeditious manner for the purpose of admitting the appeal.

JUDGE

Comparing Assistant