

GAHC010087502024



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

Case No. : WP(C)/2326/2024

CHITRAKAR DEV SARMAH
S/O- UMESH DEV SARMAH, R/O- HOUSE NO. 123, HIRAN CHANDRA PATH,
MANIKARNESWAR NORTH GUWAHATI, KAMRUP(M), ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM,
MUNICIPAL ADMINISTRATION DEPARTMENT, ASSAM SECRETARIAT,
DISPUR, GUWAHATI-781006.

2:THE GUWAHATI METROPOLITAN DEVELOPMENT AUTHORITY
REPRESENTED BY THE CHIEF EXECUTIVE OFFICER
GUWAHATI
DIST. KAMRUP(M)
ASSAM

3:THE SECRETARY
GUWAHATI METROPOLITAN DEVELOPMENT AUTHORITY
BHANGAGARH
GUWAHATI-05.

4:RASHADHAR DAS
S/O- LATE BALIRAM DAS
R/O- NORTH GUWAHATI
RAJUDUWAR
MANIKARNESWAR
DIST. KAMRUP(M)
ASSA

Advocate for the Petitioner : MR. S HAZARIKA

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

02.05.2024

1. Heard Mr. B. Kaushik, learned counsel for the petitioner. Mr. K. Gogoi, learned counsel appears for the respondent No.1, while Ms. A. Borthakur, learned counsel appears for the respondent Nos. 2 & 3/GMDA.

2. The petitioner's prayer in this writ petition is to set aside and quash the impugned order dated 29.11.2023 issued by the Chief Executive Officer, Guwahati Metropolitan Development Authority (GMDA), directing the petitioner to demolish the unauthorized portion of the building constructed in violation of the Building norms and by deviating from the approved building plan. He has also prayed for setting aside the impugned order dated 30.03.2024 issued by the GMDA, directing him to remove the unauthorized construction in pursuance to the demolition order dated 29.11.2023 issued under Section 88 of the GMDA Act, 1985.

3. The petitioner's counsel submits that though the impugned orders dated 29.11.2023 and 30.03.2024 have stated that the petitioner's construction was in violation of the building permission given to construct the building, the petitioner's request to the Chief Executive Officer, GMDA vide letter dated 31.07.2023, for conducting a reassessment of the petitioner's building, has not been acted upon till date. He accordingly prays that a direction should be

issued to the authorities to conduct a reassessment of the building of the petitioner, to ascertain whether the petitioner's building was constructed in violation of the building permission or to impose minor penalty without demolishing the construction.

4. Ms. A. Borthakur, learned counsel appearing for the GMDA, on the other hand, submits that the proceedings before the GMDA, with regard to whether the petitioner had constructed his building, by deviating from the building permission granted to him, was allowed to be proceeded with by this Court, in terms of the order dated 18.12.2023, passed in WP(C) No.6829/2023. Thereafter, on the basis of a Field Verification Report made by the GMDA, it was found that the petitioner had violated the building permission, as a result of which the impugned order dated 30.03.2024 has been issued. She accordingly submits that as the impugned order dated 30.03.2024 has been made on the basis of a Field Verification Report, there is no ground to make a challenge to the impugned orders, as these are questions of fact which have been decided by way of a Field Verification.

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

6. A perusal of the writ petition and the annexures therein show that the petitioner and the respondent No.4 had made complaints against each other, with regard to the respective constructions made by them on their own lands. The respondent No. 4 has also filed WP(C) No. 6829/2023 against the petitioner, wherein the respondent No.4 took a stand that the construction of the RCC house by the petitioner, encroached the land of the respondent No.4, besides

causing difficulty as rain water from the petitioner's building fell onto his land etc. In the meantime, a verification was done by the GMDA, wherein the GMD authorities found some deviation in the building constructed by the petitioner. Vide orders dated 29.11.2023 and 01.12.2023, the GMDA asked the petitioner to stop construction and to show cause as regards the unauthorized construction done by him. This Court while disposing WP(C) No. 6829/2023, vide order dated 18.12.2023, noticed that the GMDA authorities had initiated proceedings against the petitioner under the provisions of Sections 87 and 88 of the GMDA Act, 1985, asking him as to why the unauthorized portion of the building should not be demolished. As the GMDA authorities had already initiated proceedings, this Court allowed the GMDA proceedings to be brought to its logical conclusion in terms of the GMDA Act, 1985, vide order dated 18.12.2023. The GMDA authorities were also directed to afford an opportunity of hearing to the petitioner and the respondent No.4.

7. Subsequent to the above facts, the GMDA heard the petitioner and the respondent and vide its report dated 07.03.2024 found that there had been deviation made by the petitioner in his building, which was in violation of the building permission given to him. The complaint of the petitioner against the respondent No.4 was also verified by the GMDA and it was also found that the construction made by the respondent No.4 was an unauthorized construction.

8. The relevant portion of the report dated 07.03.2024 issued by the Secretary, GMDA is reproduced hereinbelow as follows-

“REPORT

Dated: 07.03.2024

The undersigned heard both the parties i.e. Sri Chitrakar Dev Sarmah and Sri

Arup Das (son of Rasadhar Das) in presence of Town Planner, GMDA; Smti. P. Choudhury A.A., GMDA, in connection with the file no. GMDA/UC/82/2023 and GMDA/UC/83/2023.

Whereas Sri Rasadhar Das had lodged a complaint against violation of G+2 residential building constructed by Sri Chitrakar Dev Sarmah, which was verified and based on field verification report a demolition notice is issued under section 88 of GMDA Act 1985 (as amended) vide no. GMDA/UC/82/2023/14 dated 29-11-2023 by this authority against the following violations, observing due process.

- Front setback at West side maintained 2.30 m. with 1.0 m. cantilever at 1st and 2nd floor; instead of 5.75 m. approved.*
- Rear setback at East side maintained 1.50 m, with cantilever 0.60 m. at 1st and 2nd floor: instead of 1.80 m. approved.*
- Side 1 setback at South side maintained 1.60 m. with cantilever 0.85 m. at 1st and 2nd floor; instead of 1.80 m. approved.*
- Side 2 at North side setback maintained 1.50 m, with cantilever 0.60 m. at 1st and 2nd floor; instead of 1.80 m. approved.*

Whereas, another complaint was received from Sri Chitrakar Dev Sarmah against Assam type house constructed by Sri Rasadhar Das, which has been verified and he was directed to submit the NOC and approved drawing of the house, but he could not produce any document regarding approval of the A.T. House. Further it was found to be an unauthorized construction, so a demolition notice is issued under section 88 vide no. GMDA/UC/83/2023/16 dated 01-12-2023 from this authority as per provision of the GMDA Act. Moreover the permission so accorded by ERTF under MMSGNA is found to be over a plot area

of 15Lecha, in against 12 lecha as per land document. **Punitive action may be taken against the ERTF according to the provision of building Byelaws.**

Sri Rasadhar Das requested this Authority vide letter dated 05-12-2023 not to take any coercive action against the demolition notice issued vide GMDA/UC/83/2023/16 dated 01-12- 2023 as he has filed a writ petition before the Hon'ble High Court being WP(C) /6829/2023, In this hearing Sri Rasadhar Das has produced an order of the Hon'ble High court Gauhati. The Hon'ble High Court Gauhati while disposing of the matter on 18-12-2023 observed as such as the proceeding have been initiated already against the unauthorized and deviations in the construction carried out by Sri Chitrakar Dev Sarmah and Rasadhar Das, the respondent GMDA authority shall also afford opportunities of hearing to all the stakeholder including the petitioner, in the said proceeding and take action as per law. In such view of the matter, instead of keeping this writ petition pending, the writ petition was disposed by directing the respondent GMDA authorities to bring the proceedings already initiated against Chitrakar Dev Sarmah by order dated 29-11-2023 to its logical conclusion as expeditiously as possible, preferably within a period 3 (three) months from dated 18-12-2023. As the proceedings have also been initiated against the petitioner, the same be also brought to its logical conclusion in the same manner, by the authority.

Therefore, in pursuance to the order of the Hon'ble court dated 18-12-2023 in WP(C) /6829/2023, both Sri Chitrakar Dev Sarmah and Rasadhar Das may be asked to comply with the order of Hon'ble court for removal of the unauthorized construction as per the demolition order issued vide GMDA/UC/82/2023/14 dated 29-11-2023 and GMDA/UC/83/2023/16 dated 01-12-2023 respectively and furnish respective compliance reports to this authority. Relevant order in this respect may be issued by the competent authority for necessary action to both the parties."

9. Subsequent to the above report dated 07.03.2024, which had been made on the basis of a Field Verification Report, the petitioner was directed to remove

the unauthorized portion of the construction, in pursuance to the demolition order dated 29.11.2023 and the respondent No.4 was also directed to remove his unauthorized construction, vide the impugned order dated 30.03.2024. The impugned order dated 30.03.2024 is reproduced hereinbelow as follows-

“ORDER

In pursuance to order of the Hon'ble High court Gauhati dated 18-12-2023 in WP(C) /6829/2023 and report communicated after hearing on 15-02-2024 in the office Chamber of Secretary vide Memo no. GMDA/UC/82/2023 /20-A dated 07-03-2024 Shri Chitrakar Dev Sarmah is directed to remove the unauthorized construction in pursuance to demolition order issued vide GMDA/UC/82/2023/14 dated 29-11-2023 under Section 88 in continuation to earlier show cause notice issued vide no. GMDA/UC/82/2023/8 dated 25-07-2023 under section 87 & 88 of GMDA Act, 1985. Similarly Shri Rashadhar Das is directed to remove the unauthorized construction of the whole Assam type house in pursuance to the demolition order issued vide GMDA/UC/83/2023/16 dated 01-12-2023 under Section 88 of GMDA Act, 1985 in continuation to earlier show cause notice issued vide no. GMDA/UC/83/2023/8 dated 07-09-2023 under section 87 & 88 of GMDA Act, 1985 respectively.

Both the above mentioned parties are directed to demolish the unauthorized constructions as per order issued earlier under section 88 of GMDA act. within 30(thirty) days of receipt of this letter.”

10. As can be seen from the above facts, the petitioner and the respondent No.4 have both violated the building permission and relevant rules, while making their respective constructions, which has been verified on the basis of a Field Verification Report. As such, if the report dated 07.03.2024 based on the Field Verification Report is to be challenged, which would be on facts, the same would have to be done either before the concerned or appropriate authority/forum, with evidence to show that the same is not the case. This Court is ill equipped to deal with a case involving disputed questions of fact, if

any. However, in the present case, the fact remains that the petitioner and the respondent No.4 have been found to have made illegal constructions by way of a Field Verification Report. The petitioner, in his letter dated 31.07.2023 to the Chief Executive Officer, GMDA, (Annexure-4) has prayed for reassessment of his building and/or to impose a minor penalty without demolishing the unauthorized portion of the construction, which amounts to admission of facts. In view of the above reasons, this Court does not find any reason to exercise its discretion in this case, for directing the respondents to reassess the findings made in the report dated 07.03.2024 or to impose a minor penalty without demolishing the unauthorized portion of the petitioner's construction.

11. As such, the writ petition stands dismissed. However, the dismissal of the case shall not be a bar for the concerned GMDA authorities to consider the petitioner's letter dated 31.07.2023, which shall be solely at their discretion.

JUDGE

Comparing Assistant