

GAHC010113532015



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

Case No. : WP(C)/652/2015

PHANIDHAR SHARMA

S/O- LT. HARENDRA NATH SHARMA, R/O- UDALGURI, WARD NO. 6, P.S. and
DIST.- UDALGURI, BTAD, ASSAM, PIN- 784509.

VERSUS

THE STATE OF ASSAM AND 10 ORS
REP. BY THE COMMISSIONER and SECY. TO THE GOVT. OF ASSAM,
MUNICIPAL ADMINISTRATION, DISPUR, GHY- 6.

2:THE BODOLAND TERRITORIAL COUNCIL
B.T.A.D.
ASSAM
REP. BY THE SECY.
URBAN DEVELOPMENT
KOKRAJHAR- 783370.

3:THE UDALGURI TOWN COMMITTEE
UDALGURI
BTAD
ASSAM
PIN- 784509.

4:THE CHAIRMAN
UDALGURI TOWN COMMITTEE
UDALGURI
BTAD
ASSAM
PIN- 784509.

5:THE DY. COMMISSIONER
UDALGURI

BTAD
ASSAM
PIN- 784509.

6:KULDEEP DAS
S/O- LT. DHARANI DAS
UDALGURI
WARD NO. 4
P.S. and DIST.- UDALGURI
BTAD
ASSAM
PIN- 784509.

7:KARUNA DEKA
S/O- SRI MAHIRAM DEKA
UDALGURI
WARD NO. 6
P.S. and DIST.- UDALGURI
BTAD
ASSAM.

8:NITISH DAS
LT. PAREN DAS
UDALGURI
WARD NO. 5
P.S. and DIST.- UDALGURI
BTAD
ASSAM
PIN- 784509.

9:PHULEN MAHANTA
S/O- ACHUT MAHANTA
WARD NO. 5
P.S. and DIST.- UDALGURI
BTAD
ASSAM
PIN- 784509.

10:BHASKAR DAS
S/O- SRI DHIREN DAS
UDALGURI
WARD NO. 3
P.S.- UDALGURI
DIST.- UDALGURI
BTAD
ASSAM
PIN- 784509.

11:DALIM DAS
S/O- LT. HARI PRASAD DAS
UDALGURI
WARD NO. 5
P.S. and DIST.- UDALGURI
BTAD
ASSAM
PIN- 784509

Linked Case : MC/852/2015

PHANIDHAR SHARMA

VERSUS

THE STATE OF ASSAM AND 10 ORS

Linked Case : I.A.(Civil)/946/2016

THE UDALGURI TOWN COMMITTEE AND ANR

VERSUS

PHANIDHAR SHARMA and 9 ORS.

For the petitioner (s) : Mr. S. R. Gogoi, Advocate

For the respondent (s) : Mr. B. Ramchiary, Advocate
Ms. H. Barman, Advocate

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
ORDER

08.08.2024

Heard Mr. S. R. Gogoi, the learned counsel appearing on behalf of the petitioner and Mr. B. Ramchiary, the learned counsel appearing on behalf of the respondent Nos.3 & 4. Mr. J. Handique the learned counsel

appears on behalf of the respondent Nos.1 & 5. None appears on behalf of the respondent Nos.6 to 11 on call.

2. The case of the petitioner is that the petitioner was an earlier tenant under the Udalguri Town Committee in respect to a Shopping Complex which consisted of four rooms. Subsequently, in order to reconstruct the premises and make it better, the Udalguri Town Committee took over the possession of the said room from the petitioner and thereupon constructed a new RCC building having six rooms. Pursuant thereto, a notice was issued on the 05.05.2014 whereby applications were invited for allotment of the rooms of the newly constructed RCC Shopping Complex at Daily Market, Ward No.3 and a Weekly Market, Ward No.5 on monthly rent basis from the interested traders/businessmen on various terms and conditions. The petitioner accordingly applied by depositing a security deposit which was duly acknowledged. However, to the shock and surprise of the petitioner, the petitioner's application was rejected and accordingly a notice was issued on 08.01.2015 asking the petitioner to take refund of the security deposit so made. The petitioner thereupon submitted a representation on 22.01.2015. However, as the same fell in deaf ears, the petitioner approached this Court by filing the present writ petition. It is very pertinent to mention that on 13.02.2015, when the matter came up before this Court, this Court taking into account the facts not only issued notice, but also directed that till the next date, no allotment shall be made in respect of the RCC Shopping Complex at Wednesday Weekly Market in case allotment has not been made.

3. It is the case of the petitioner that on 18.02.2015, the said certified copy was served upon the respondent Nos.3 & 4. However, most

surprisingly on 19.02.2015, the respondent Nos.3 & 4 entered into agreement with the respondent Nos.6 to 11 as well as also handed over the lock and keys on 01.03.2015. This aspect of the matter is clearly admitted by the respondent Nos.3 & 4 in the affidavit filed by the Chairman, Udalguri Town Committee on 22.04.2015 as is apparent from paragraph No.5. Therefore, on the face of it, the action taken by the respondent Nos.3 & 4 was in gross violation to the order passed by this Court. It is no longer *res integra* that when an authority takes any action which is in violation of the order of this Court, the said order would be void *abinitio*. Under such circumstances, the entering into any agreement with the respondent Nos.6 to 11 on 09.02.2015 and handing over the locks and keys w.e.f. 01.03.2015 would not create any right in favour of the said private respondent Nos.6 to 11 as the same was in violation to the order passed by this Court.

4. Be that as it may, this Court has also taken note of the reason why the petitioner's application has been rejected. It is seen that the rejection of the petitioner's application is on the ground that in the notice dated 05.05.2014 whereby applications were invited, there was a Clause being Clause No.7 wherein it was stipulated that no lessee/tenant would transfer or lease the premises once allotted to the other party. This Clause was taken into consideration to reject the application of the petitioner on the ground that the petitioner in the year 1991 had subleased his allotted shop. In the opinion of this Court, this Clause in the notice would have only been applicable in respect when allotment is made in pursuance to the said notice and not in respect of infirmity which had existed much prior to the issuance of the notice.

5. Under such circumstances, the reason on which the petitioner's application was rejected, on the face of it, amounts to a malice in law taking into account that a factor was taken into consideration which could not have been taken into consideration, and as such, this Court is of the opinion that this is a fit case for exercising jurisdiction under Article 226 of the Constitution.

6. Accordingly, this Court holds that the rejection of the petitioners application on the grounds so assigned in the affidavit-in-opposition amounts to suffer from malice in law and is illegal and arbitrary. Accordingly, the said rejection is set aside.

7. This Court in the previous segments of the instant order has also taken note of that no right has flowed upon the respondent Nos.6 to 11 on the basis of handing over the possession as well as entering into certain agreements taking into account that the said exercise was carried out in complete violation to the order passed by this Court.

8. Accordingly, this Court directs the respondent authorities to carry out a fresh exercise for allotment of the rooms in the newly constructed RCC Shopping Complex at the Weekly Market, Nard No.5 in accordance with law.

9. The said exercise be completed within a period of 3(three) months from the date of the instant order.

10. In view of the above, the instant writ petition stands disposed of.

JUDGE

Comparing Assistant