

GAHC010130132021



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

Case No. : WP(C)/4269/2021

PARESH CHANDRA DAS
S/O- LT. TARAK CHANDRA DAS, PERMANENT R/O- VILL- BHALUKI, P.O.
BHALUKI, DIST.- BAJALI, ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE COMM. AND SECY., DEPTT. OF URBAN DEVELOPMENT
DEPTT., DISPUR, GHY-6

2:THE ASSAM STATE HOUSING BOARD
R.G BARUAH ROAD
GHY-5

3:THE COMMISSIONER
ASSAM STATE HOUSING BOARD
R.G BARUAH ROAD
GHY-5

4:THE DY. CONSTRUCTION ENGINEER ELECTRICAL
ASSAM STATE HOUSING BOARD
R.G BARUAH ROAD
GHY-5

5:THE SITE IN CHARGE ENGINEER
ASSAM STATE HOUSING BOARD
RMS
MALIGAON
GHY-12

6:THE ASSAM POWER DISTRIBUTION COMPANY LTD.
REP. BY ITS MANAGING DIRECTOR

BIJULI BHAWAN
PANBAZAR
GHY-1
KAMRUP (M

Advocate for the Petitioner : MR. S BORA

Advocate for the Respondent : SR. GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE KARDAK ETE**

ORDER

Date : 26.04.2024

Heard Mr. S. Bora, learned counsel for the petitioner. also heard Mr. T.R. Gogoi, learned counsel for the respondents. No.2, 3 and 4 and Mr. B. Choudhury, learned counsel for the respondent No.6.

2. By filing this writ petition, the petitioner challenge the show cause notices dated 02.07.2021 and 29.07.2021 by which the petitioner has been directed to show cause as to why the allotment of flat in favour of the petitioner at Maligaon shall not be cancelled on the ground of violation of condition of housing accommodation rules and also as to why eviction process shall not be carried against the petitioner.

3. The case of the petitioner is that the petitioner was allotted a flat by the respondent No.3 vide order dated 26.02.2016 against the Rental Housing Scheme for LIG Building No. F Flat No.1, Maligaon at Guwahati with certain terms and conditions. According to the petitioner though the petitioner has accepted the allotment, however, since there was no electricity and water supply connection, he has not physically occupied and enjoyed the flat rather the same is under possession on lock and key only.

4. According to the petitioner while he was waiting for proper water and electricity connection, suddenly the impugned notice dated 02.07.2021 was issued to the petitioner to show cause as to why his allotment order in respect of allotment of Flat No. LIG-F/01 shall not be cancelled for violation of the conditions of Housing Accommodation Rules 15(1) Chapter XIII of the Assam State Housing Board, Rules, 1976 alleging that a communication has been received from the Sub-Divisional Engineer, Jalukbari Electricial Sub-Division, addressed to the Commisioner, Assam State Housing Board that the

tenant of Flat No.F/01 under RHS, Maligaon is indulged in theft of power by by-passing of Meter No.AS1060454. It is also stated that the offence committed is serious under Section 135 of Electricity Act, 2003 and an FIR has already been filed at Jalukbari Police Station against the incident of theft of electricity.

5. On receipt of the said impugned notice, the petitioner has submitted his reply on 30.06.2021. Thereafter, vide another order No.SHB/Rent/93/2016/22/2360, the respondent authority has issued the impugned order dated 06.08.2021 directing the petitioner to show cause as to why the allotment order in respect of the said flat in favour of the petitioner shall not be cancelled and why eviction shall not be carried out for violation of the conditions of Housing Accommodation Rule 15(i) Chapter-XIII of ASHB Rule 1976. Thereafter, the petitioner has again replied to the same on 12.08.2021. However, according to the petitioner as on date, no decision has been taken on the show-cause reply filed by the petitioner.

6. Mr. S. Bora, learned counsel for the petitioner submits that since he is not physically occupying the allotted flat rather under the possession on lock and key only. Therefore, no question of theft of electricity by the petitioner could arise. He submits that since there is no proper water and electricity connection, the petitioner is not enjoying the flat as on date physically. Therefore, the allegation made by the authorities is totally false.

7. Mr. T.R. Gogoi, learned counsel for the respondent has submitted that as on date no decision has been taken to the reply filed by the petitioner to the impugned show-cause notice dated 06.08.2021 and no further action has been initiated against the petitioner. However, he submits that appropriate direction may be given to the respondent authorities to take a decision on the reply filed by the petitioner.

8. Having considered the submissions made by the learned counsel for the parties and considering the nature of grievance raised in the writ petition, this Court is of the view that in the present proceeding, the factual aspect as sought to be raised by the parties cannot be gone into. However, since the notice issued by the respondent authorities have been duly replied by the petitioner by responding to impugned show-cause and considering that the respondent authority has not considered and decided the reply of the petitioner, I deem it appropriate to dispose of the writ petition with a direction to the Commissioner, Assam State Housing Board to take a decision on the reply of the petitioner dated 12.08.2021.

9. Accordingly, the Commissioner, ASHB is directed to consider the reply of the petitioner dated

12.08.2021 within a period of 15 days from today and to pass appropriate order and thereafter, is at liberty to initiate appropriate action as may be permissible under the law.

10. Writ petition stands disposed of with the above direction.

No order as to cost.

JUDGE

Comparing Assistant