

GAHC010139342023



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

Case No. : WP(C)/3719/2023

SMTI. BHARATI DAS AND ANR
W/O LATE DR. OM PRASAD DAS, R/O BARNACHAL ROAD, 3RD BYE LANE,
HOUSE NO. 17, BAMUNIMAIDAN, GUWAHATI-21, DIST-KAMRUP (M),
ASSAM

2: SANTANU PRASAD DAS
S/O LATE UTTAM CHANDRA DAS
R/O BARNACHAL ROAD
3RD BYE LANE
HOUSE NO. 17
BAMUNIMAIDAN
GUWAHATI-21
DIST-KAMRUP (M)
ASSA

VERSUS

THE STATE OF ASSAM AND 8 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT OF
ASSAM, DISPUR, GUWAHATI-6

2:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM
FOREST AND ENVIRONMENT DEPARTMENT
DISPUR
GUWAHATI-6

3:THE PRINCIPAL CHIEF CONSERVATOR OF FOREST AND HEAD OF
FOREST FORCE
/ADDITIONAL PRINCIPAL CHIEF CONSERVATOR OF FOREST (PLANNING)
ARANYA BHAWAN
PANJABARI
GUWAHATI-37
ASSAM

4:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM
HOUSING AND URBAN AFFAIRS DEPARTMENT
DISPUR
GUWAHATI-6

5:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM
MINES AND MINERALS DEPARTMENT
DISPUR
GUWAHATI-6

6:THE JOINT SECRETARY TO THE GOVERNMENT OF ASSAM
MINES AND MINERALS DEPARTMENT
DISPUR
GUWAHATI-6

7:THE COMMISSIONER GUWAHATI MUNICIPAL CORPORATION
GMDA BUILDING
BHANGAGARH
GUWAHATI-5

8:THE TOWN PLANNER GUWAHATI MUNICIPAL CORPORATION
UZANBAZAR
GUWAHATI-1

9:THE GUWAHATI METROPOLITAN DEVELOPMENT AUTHORITY
GUWAHATI-5
BHANGAGARH
ASSA

Advocate for the Petitioner : MR. B K DAS, MS C BORA,MR A ALAM,MR H P GUWALA,MR
P KATAKI

Advocate for the Respondent : GA, ASSAM, SC, GMC,SC, FOREST

BEFORE
HONOURABLE MR. JUSTICE KARDAK ETE

ORDER

Date : 13-12-2024

Heard Mr. B.K. Das, learned counsel for the petitioners. Also heard Mr. I. Borthakur, learned
counsel for the respondents No. 2 and 3; Mr. N. Goswami, learned counsel for the respondents No.1, 4,

5 & 6 and Mr. P. Nayak, learned Standing counsel, GMC/GMDA appearing for the respondents No.7, 8 and 9.

2. The challenge made in this petition is to the communication dated 02.03.2023 issued by the Joint Secretary, Government of Assam, Mines and Minerals Development Department, whereby, the payment of @ 2% of the total project cost of building as Forest Royalty is made applicable in Government Department/Urban Local Bodies for both Government and Private Agencies.

3. It is contended by the petitioner No.1 that after untimely death of her husband Late Dr. Om Prasad Das and her mother-in-law, she applied for review plan of G + 3 (ground plus three) RCC building permission along with her brother-in-law (Shri. Santanu Prasad Das) i.e. petitioner No. 2, over a plot of land under Patta No. 95, Dag No. 625, land measuring 3.88 R prime Village Bamunimaidan, Ulubari Mouza in the district of Kamrup (M), Assam. As per procedure, the same was applied online by depositing fees to the GMDA on 19.11.2022 vide file No. GPL/BP/23/985/15052018/31/30.

4. The petitioners were verbally asked to pay an amount of 2% of the total project cost of building as forest Royalty relying on the impugned communication dated 02.03.2023.

5. On earlier occasion, NOC was issued by the GMC vide No. GPL/BP/23/985/15052018 dated 11.02.2021 for construction of G + 2 building, in favour of Usha Rani Das, Dr. Om Prasad Das and Santanu Prasad Das petitioner No.2 herein.

6. Mr. B.K. Das, learned counsel for the petitioner submits that the Coordinate Bench of this Court in a similar case vide order dated 22.11.2024 passed in WP(C) 6148/2024 has disposed of the writ petition in view of the order dated 24.09.2024 passed in WP(C) 4085/2024, wherein, the impugned communication dated 02.03.2023 has been set aside and further directed the GMC authorities to proceed with the consideration of building application filed by the petitioners in that case without insisting upon the forest royalty.

7. Mr. I. Borthakur, learned standing counsel, Forest Department fairly submits that the present matter is squarely covered by the order dated 24.09.2024 passed in WP(C) 4085/2024 and order dated 22.11.2024 passed in WP(C) 6184/2024. Therefore, he submits that the present writ petition may be disposed of on similar terms by providing similar relief to the petitioners.

8. Having considered the submission of the learned counsel for the parties and also on perusal of the order dated 22.11.2024 passed in WP(C) 6148/2024 and order dated 24.09.2024 passed in WP(C) 4085/2024, I am of the view that the case of the petitioner is squarely covered by the above orders.

9. Accordingly, the present writ petition is disposed of by granting similar relief as provided to the petitioners in the two writ petitions (supra) with an observation that the Urban Local Bodies cannot impose royalty upon the private person/entity in respect of private construction carried out and consequently cannot also insist on payment of royalty as a condition for issuance of permission to construct and to carry out the construction on the basis of permission so granted. Thus, the GMC/GMDA shall not insist upon payment of royalty upon the petitioners as a condition for granting permission to carry out the construction.

10. Writ petition stands disposed of. No order as to costs.

JUDGE

Comparing Assistant