

GAHC010169662021



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

Case No. : WP(C)/5451/2021

AMINA BEGUM
W/O AHMED ALI, R/O FUZDARI PATTY, KIRTAN GHAR PATH, KATH MILL,
CHARIALI WARD NO. 14, NAGAON 782001

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY ITS COMMISSIONER AND SECY. DEPTT. OF MUNICIPAL
ADMINISTRATION DISPUR, ASSAM.

2:NAGAON MUNICIPAL BOARD

HAVING ITS OFFICE AND PRINCIPAL PLACE OF BUSINESS AT D.C. COURT
CAMPUS
NAGAON
REPRESENTED BY ITS CHAIRMAN
P.S.AND P.O. SADAR
NAGAON
PIN 782001

3:THE EXECUTIVE OFFICER

NAGAON MUNICIPAL BOARD NAGAON
P.S. AND P.O. SADAR
NAGAON
PIN 782001

4:THE DEPUTY COMMISSIONER

NAGAON
P.S. AND P.O. SADAR
NAGAON
PIN 78200

Advocate for the Petitioner : MR. S P ROY
Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

10.01.2024

1. The writ petition has been filed by the petitioner being aggrieved at the impugned notice dated 09.06.2021 issued by the Executive Officer, Nagaon Municipal Board in the name of Sri Babul Ahmed and Smt. Krishna Das as well as demolition notice dated 22.09.2021 issued under Section 177(1) of the Assam Municipal Act, 1956 (for short' the Act of 1956) issued by the Executive Officer, Nagaon Municipal Board.
2. From a perusal of the writ petition it reveals that the petitioner is the owner of a plot of land measuring 10 L covered by Dag No. 1227 included in Patta No. 237 of village Nagaon, Kissmat, Mouza-Town Nagaon. It has been stated in the writ petition that the petitioner had applied before the Nagaon, Municipal Board for granting permission for construction of G+3 storied RCC building which was granted vide NOC dated 19.01.2016 and the plan was approved by the Municipality for the construction of the 3 storied residential building. To support the said statement made in paragraph 4, the petitioner have enclosed the NOC dated 19.01.2016 and the approved plan.
3. At this stage, this Court, however, finds it very pertinent to take note that the petitioner did not enclose the application which was filed before the Nagaon, Municipal Board seeking permission. However, the application

for construction is enclosed as to Annexure-A, the affidavit-in-opposition filed by the Executive Officer of Nagaon Municipal Board. From the perusal of the said application, it clearly reveals that the petitioner had sought for permission for G+2 storied building.

4. This Court also finds it very pertinent to take note of Annexure-3 to the writ petition which is the NOC dated 19.01.2016. From a perusal of the said NOC, it is categorically mentioned that the sanction for construction of the building granted thereby measuring construction of ground floor of 379 square feet, 1st floor 584 square feet and 2nd floor 584 square feet. There was no permission granted for the 3rd, 4th, 5th and 6th floor. The NOC categorically mandated the front set back as well as rear setbacks and the side set back of the said building. The height of the building was specifically mention as 32 feet. The approved plan has been enclosed as Annexure-4 to the writ petition. From the said approved plan, it is also very clear that the approval was granted only for the ground floor, 1st floor and the 2nd floor.

5. Be that as it may, the petitioner herein had constructed a ground floor, 1st floor, 2nd floor as well as the 3rd floor for which a notice was issued to Sri Babul Ahmed and Smt. Krishna Das on 09.06.2021.

6. The petitioner herein on coming to learn about the said notice approached before the respondent authorities and submitted some papers. However, there was no hearing granted to the petitioner and subsequently, the order dated 22.09.2021 was passed thereby directing the demolition of the 3rd floor in terms of Section 177 of the Act 1956.

Under such circumstances, the petitioner has therefore approached this Court challenging the notice dated 09.06.2021 as well as the notice of demolition dated 22.09.2021. It is also relevant to take note on upon filing of the writ petition, an order was passed on 10.08.2021 whereby notice was issued and there was a direction that the impugned notice dated 22.09.2021 issued by the Executive Officer, Nagaon Municipal Board, Nagaon pertaining to the petitioner shall remain suspended. The interim order thereupon had been continued from time to time.

7. The respondent No.3 has filed an affidavit-in-opposition the contents of which are already been mentioned while narrating the fact (supra). The petitioner thereupon has also filed a reply to the said affidavit-in-opposition.

8. This Court upon hearing the learned counsels for the parties and upon perusal of the materials finds that the petitioner admittedly was not issued any show cause notice prior to issuance of the demolition notice dated 22.09.2021 by the Executive Officer, Nagaon Municipal Board. The notice though was issued to Sri Babul Ahmed and Smt. Krishna Das but the petitioner alleges that due opportunity was not given to the petitioner for submitting her reply as well as personal hearing to the petitioner.

9. This Court having given an anxious consideration to the matter is of the opinion that as the demolition of petitioners building would entail civil consequences, the petitioner is entitle to a notice prior to initiating any process for demolition. Under such circumstances, this Court therefore, set aside the demolition notice dated 22.09.2021 issued by the Executive Officer, Nagaon Municipal Board.

10. However, this Court makes it very clear that setting aside and quashing the demolition notice dated 22.09.2021 shall not preclude the respondent, Nagaon Municipal Board to take appropriate action in accordance with law. This Court further holds that the Appeal so filed before the Deputy Commissioner, Nagaon has become redundant in as much as the demolition notice dated 22.09.2021 has been set aside by this Court.

11. With the above observations and directions, this writ petition stands disposed of.

JUDGE

Comparing Assistant