

GAHC010173152024



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

Case No. : WP(C)/4289/2024

KAILASH CHAND SHARMA
SON OF LATE JWALA PRASAD SHARMA, RESIDENT OF TILLOTOMA
APARTMENT, A.K. DEV ROAD, DHIRENPARA, P.O. AND P.S. FATASIL
AMBARI, GUWAHATI, PIN- 781025, DISTRICT- KAMRUP (M), (ASSAM),
(MOBILE NO. 9435049461)

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE SECRETARY, GOVERNMENT OF ASSAM,
GUWAHATI DEVELOPMENT DEPARTMENT, DISPUR, GUWAHATI- 781006

2:THE COMMISSIONER
GUWAHATI MUNICIPAL CORPORATION
GUWAHATI- 781006
ASSAM

3:THE ADDITIONAL COMMISSIONER
GUWAHATI MUNICIPAL CORPORATION
GUWAHATI- 781006
ASSAM

4:THE COLLECTOR
GUWAHATI MUNICIPAL CORPORATION
GUWAHATI- 781006
ASSAM

5:THE ASSISTANT PLANNER
GUWAHATI MUNICIPAL CORPORATION
GUWAHATI- 781001
ASSAM

6:SRI ASHOK SHARMA
RESIDENT OF TILLOTOMA APARTMENT
A.K. DEV ROAD
DHIRENPARA
GUWAHATI- 781025
KAMRUP(M)
ASSAM

7:SRI SAMAR KANTI BISWAS
PROPRIETOR OF M/S SUMAN AND SANJAY BUILDERS
TILOTTOMA APARTMENT
A.K. DEV ROAD
DHIRENPAR

For the Petitioner(s) : Mr. S. Chamaria, Advocate

: Mr. G. Jalan, Advocate

For the Respondent(s) : Mr. S. Bora, SC, GMC

Date of Hearing : **27.08.2024**

Date of Judgment : **27.08.2024**

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

Heard Mr. S. Chamaria, the learned counsel appearing on behalf of the Petitioner and Mr. S. Bora, the learned Standing counsel appearing on behalf of the Respondent Nos. 1 to 5.

2. Taking into account the dispute involved in the instant proceedings, this Court is inclined to dispose of the instant writ petition at the motion stage itself.

3. Further to that, in view of the dispute involved, this Court does not find it relevant to issue notice upon the Respondent Nos.6 and proforma

Respondent No.7.

4. From the materials on record, it is seen that the proforma Respondent No. 7 vide a Deed of Sale bearing Deed No.13352 dated 28.12.2020 had sold a plot of land to the Petitioner herein admeasuring 4.86 Lechas covered by Dag No.2396 (new) of K.P. Patta No.860 (new) situated at Revenue Village - Sahar Fatashil under Mouza Beltola within Dispur Revenue Circle in the District of Kamrup (M) Assam.

5. Pursuant to the said sale, it transpires that the Petitioner constructed a commercial shop on the said land which has been assessed by the Guwahati Municipal Corporation as Holding No. 12559420 of Ward No.6. It further appears that on 09.01.2024, the Assistant Town Planner, Guwahati Municipal Corporation issued a notice to the Tillotoma Apartment along with the proforma Respondent No.7 in pursuance to a letter received from one Ashok Sharma (Respondent No.6 herein) alleging illegal construction of commercial shop by the Petitioner. The proforma Respondent No.7 thereupon replied to the said notice on 19.01.2024 stating inter alia that after completion of the building, he had handed over the building to the Tillotoma Apartment Residential Society and Tillotoma Apartment Commercial Society along with the No Objection Certificate and the Approved Plan of the building to the Tillotoma Apartment Residential Society. It was also mentioned that if the Office of the GMC found that the construction of the building illegal and extremely deviated from the approved plan provided by the GMC, the Office shall opt for demolition of the deviated parts of the apartment if it deem fit. It was however stated that if there is a provision to pay a penalty and regularize the deviated parts of the apartment, the proforma Respondent

No.7 be informed about the same so that the residents of the residential part of the apartment as well as the owners of the commercial shops of the apartment do not have to suffer any kind of loss on their part.

6. Subsequent thereto, the Commissioner of GMC had issued a communication on 26.04.2024 to both the Tillotoma Apartment as well as the proforma Respondent No.7 stating inter alia that the notice was issued for documents on 09.01.2024 but in response to the notice, no reply have been submitted and as such notice under Sections 337(1) & (2) of the Guwahati Municipal Corporation Act, 1971 (for short "the Act of 1971") is being prepared. It was further mentioned in the said notice that if there is no valid explanation as demanded and the explanation so submitted is found unsatisfactory, the GMC Authority would be free to proceed under Section 337(3) and 337(A)(1) of the Act of 1971 to demolish/seal the unauthorized construction as mentioned in the Schedule to the said notice. It is very pertinent to take note of the unauthorized construction which was mentioned in the Schedule was a shop in front of the building and not within the building where the permission was granted.

7. To the said notice, the proforma Respondent No.7 issued a communication that the said shop was constructed not beyond the approved six numbers of shops in the approved plan but admitted that there was deviation in re-alignment of the said shop which may be compassionately allowed by imposing any penalty as provided under law inasmuch as the innocent owner i.e. the petitioner herein had purchased the shop for consideration and would suffer irreparable loss for no fault of his own.

8. It is also seen from the records that the Petitioner had also submitted a

representation on 21.08.2024. The case made out in the said representation dated 21.08.2024 is that he is the owner of the shop and was never put to notice and on the other hand, on the 20.08.2024, personnels from the GMC Enforcement Branch came for demolition of the shop of the petitioner without following due process of law and without giving him any opportunity of hearing. It was also stated that upon the resistance and objection made by the son of the petitioner that no notice had been issued to the owner of the shop as regards any deviation of construction, the GMC Authorities returned back. It is under such circumstances, the Petitioner requested for an opportunity of being heard by serving notice before any further action is taken against the owner/occupier of the shop and till granting full opportunity of hearing requested to keep in abeyance the notice dated 26.04.2024.

9. In the backdrop of the above, let this Court take note of the submissions made by the learned counsel for the parties.

10. Mr. S. Chamaria, the learned counsel appearing on behalf of the Petitioner admitted that the construction of the commercial shop by the petitioner was admittedly without any permission. However, to exercise the power for demolition under Section 337 of the Act of 1971, the notice has to be issued to the owner and in the instant case, as the notice has not been issued, it amounts not only to the violation of the principles of natural justice but also an infraction to Sub-Section (1) of Section 337 of the Act of 1971. The learned counsel had also placed before this Court the approved plan as well as the permission so granted by the GMC to the proforma Respondent No.7 for construction of the building. He submitted that in the approved

plan, there were six shops within the building to be constructed. However, only five shops were made taking into account the flat owners' interest and as such a portion of the land was sold to the Petitioner by the proforma Respondent No.7 vide the registered Deed of Sale dated 28.12.2020. Thereupon, the Petitioner had constructed the commercial shop which had been duly assessed by the GMC. He submitted that as per the Guwahati Building Construction Regulation Byelaws, 2014, unauthorized construction which is within the norms of the building byelaws subject to the satisfaction of the authority is compoundable and therefore submits that the Petitioner had also submitted an application to the Respondent Authorities for compounding the same which have not yet been decided.

11. On the other hand, Mr. S. Bora, the learned Standing counsel appearing on behalf of the Respondent Nos. 1 to 5 submitted that the construction which have been carried out by the Petitioner is not only without permission but also in the setback area which could not have been constructed even if the proforma Respondent No.7 had sold that portion of the land as it would amount to violation of the building permission itself. He further submitted that a perusal of the permission would show that the permission have been given only for residential purpose and if it is taken into account that the said shop so constructed by the Petitioner is in lieu of the six shops which were approved by the authorities, then also construction of a commercial shop cannot be compounded. He further submitted that though the learned counsel appearing on behalf of the Petitioner had submitted that the Petitioner had submitted for regularization, but there is not a single averment in the writ petition. He also submitted that there is nothing on record to show that the Petitioner applied for regularization.

12. This Court has duly heard the learned counsels appearing on behalf of both the parties and also given due consideration to their respective submissions.

13. From a perusal of the Deed of Sale bearing Deed No. 13352 dated 28.12.2020, it is only seen that the proforma Respondent No.7 had sold a plot of land measuring 4.86 Lechas to the Petitioner. Admittedly, the Petitioner without taking any permission, had constructed the said commercial shop. Be that as it may, as it is an admitted fact by the Petitioner herein that he had constructed the commercial shop and from a perusal of the documents, it is seen that neither the Tillotoma Apartment nor the proforma Respondent No.7 have claimed ownership over the said shop, it has to be therefore deemed that the Petitioner is the owner and occupier of the shop in question.

14. In that view of the matter, if this Court duly takes note of sub-Section (1) of Section 337 of the Act of 1971, the notice has to be issued to the Owner. However, admittedly there is no notice served upon the Petitioner and as such, any action taken in exercise of powers under Section 337 of the Act of 1971 without notice to the owner would be an infraction to the provisions of Section 337 of the Act of 1971. Accordingly, this Court disposes of the instant writ petition thereby directing the Respondent Authorities, more particularly the Commissioner, GMC not to demolish the commercial shop without first resorting to the mandate of Section 337 of the Act of 1971. In other words, the petitioner has to be issued notice prior to taking any action under Section 337(3) of the Act of 1971.

15. The petitioner, upon receipt of the said notice, would be at liberty to

submit a reply. The Commissioner, GMC shall thereupon decide as per the mandate of the Act of 1971.

16. This Court, however for the sake of clarity observes that this Court had not decided on the alleged violations by the Petitioner and the Commissioner, GMC shall decide the same in the manner provided in the Act of 1971 and the Building Byelaws framed.

17. With above observations and directions, the instant petition stands disposed of.

JUDGE

Comparing Assistant