

GAHC010221942021



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

Case No. : WP(C)/7257/2021

FANCY BAZAAR MUNICIPAL MARKET DEALERS ASSOCIATION AND 5
ORS
REP. BY ITS SECRETARY ARUP KR,. CHOUDHURY, FANCY BAZAAR GMC
MARKET BUILDING, FANCY BAZAAR , GUWAHATI-01

2: ARUP KR. CHOUDHURY
S/O- LATE DEBO PRASAD CHOUDHURY
SECRETARY TO FANCY BAZAAR MUNICIPAL MARKET DEALERS
ASSOCIATION SHOP NO-142
GROUND FLOOR
G.M.C MARKET COMPLEX
FANCY BAZAAR
GHY-01
DIST- KAMRUP(M)
ASSAM

3: DILIP DAS
S/O- BHOLA RAM DAS
R/O-SHANKAR NAGAR
GHY

4: ANANTA
AJMERA
S/O- AJAY KR. JAIN
R/O- PANBAZAR
GHY

5: BINAY SARKAR
S/O- RATAN SARKAR
R/O- GARCHUK
GHY

6: SUDAMA SAHANI
S/O- JAGADISH SAHANI

R/O- BHARALUMUKH
GH

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP BY THE SECRETARY TO THE GOVT. OF ASSAM, GUWAHATI
DEVELOPMENT DEPARTMENT, DISPUR, GHY-06

2:THE COMMISSIONER
GUWAHATI MUNICIPAL CORPORATION
P.O- PANBAZAR
GUWAHATI-01
DIST- KAMRUP(M)
ASSAM

3:THE JOINT COMMISSIONER
GUWAHATI MUNICIPAL CORPORATION
P.O- PANBAZAR
GUWAHATI-01
DIST- KAMRUP(M)
ASSAM

4:THE ADDITIONAL COMMISSIONER
GUWAHATI MUNICIPAL CORPORATION
P.O- PANBAZAR
GUWAHATI-01
DIST- KAMRUP(M)
ASSAM

5:GUWAHATI THALUWA SAK-PACHALI BYABASAYEE SAMITTEE
A REGISTERED SAMITTEE UNDER THE REGISTRATION OF SOCIETIES
ACT
1860 HAVING ITS HEAD OFFICE SITUATED AT FANCY BAZAR
GUWAHATI
DISTRICT-KAMRUP(M)
ASSAM BEING REPRESENTED BY ITS PRESIDENT SRI CHAMPAK
BARMAN

For the Petitioner(s) : Mr. M. J. Baruah, Advocate

For the Respondent(s) : Mr. S. Bora, SC, GMC
Mr. B.D. Goswami for respondent No. 5
Ms. R. Begum, Advocate

Date of hearing : 26.11.2024

Date of Judgment : 26.11.2024

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT & ORDER(ORAL)

Heard Mr. M.J. Baruah, the learned Counsel appearing on behalf of the petitioners. Mr. S. Bora, the learned Standing Counsel, GMC who appears on behalf of the respondent Nos. 1 to 4 and Mr. B.D. Goswami, the learned counsel who appears on behalf of respondent No. 5.

2. The case of the petitioners herein is that the petitioner No.1 is a Society registered under the provisions of the Societies Registration Act, 1860. The petitioner Nos. 2 to 6 are the members of the petitioner No. 1. In the year 1989, more particularly, on 22.02.1989, a fire incident took place in the Fancy Bazaar GMC market rendering hundreds of traders jobless. The said fire victims formed an association to raise the common grievances and protect the interest of the fire victims, particularly known as the Fancy Bazaar Municipal Market Dealers Association.

3. The said Association thereupon made various representations before the GMC. However, as there was no positive outcome resulted a writ petition was filed before this Court which was registered as C.R. No. 281/1989. The writ petition was disposed of by this Court vide an order dated 03.04.1989. In terms

of the said order so passed in the writ petition, there was a direction to the GMC Authorities for completion of the Multi-storied building and the persons who were entitled to do business at the Machkhowa Temporary Market could be settled at the Multi-storied building cum office complex at Fancy Bazaar and the Machkhowa Temporary Market would be vacated thereafter.

4. It is also seen that subsequent thereto, there were two more writ petitions filed in the year 1998 and 2000 which were registered as C.R. No. 5290/1998 and WP(C) No. 4586/2000. The said writ petitions were disposed of by this court whereby two categories of victims of the 1989 fire incident were culled out. The Category-I victims were those who had valid licenses and Category-II victims were those persons who had licenses but their licenses had expired.

5. This Court in the common order passed in C.R. No. 5290/1998 and WP(C) No. 4586/2000, directed that those person in Category-I should be given allotment on priority basis. Thereupon the GMC Authorities floated a public notice on 02.04.2007 by which 61(sixty one) numbers of vendors/hawkers who were not fire victims were sought to be settled. The petitioner Association herein challenged the same by filing a writ petition being WP(C) No. 2254/2007, which was disposed of with certain observations and directions vide the judgment and order dated 18.09.2007. Paragraph Nos. 8, 9, 10 and 11 of the said judgment and order dated 18.09.2007 passed in WP(C) No. 2254/2007 being relevant is reproduced herein under:

‘8. In the backdrop of what have been indicated above, when I revert to the resolutions, adopted on 03.11.2004, what transpires is that the Guwahati Municipal Corporation resolved, on 03.11.2004, to allot open space surrounding the newly constructed market to fruit vendors including other hawkers. But, whether the term, ‘other

hawkers' included exclusively fruit vendors or not, is a question, which is not under challenge in the present writ petition and this Court, therefore, expresses no opinion as regards the question as to whether or not the resolution No.4, dated 03.11.2004, was meant to allot space to only such hawkers, who were fruit vendors. What is also of great significance to note is that the resolution, dated 17.12.2004, reflects that the Guwahati Municipal Corporation decided to allot open space inside their market, which forms the pattern of the alphabet 'L'. It is the case of the Guwahati Municipal Corporation that while seeking to allot space in pursuant to the impugned Public Notice, dated 21 04. 2007, it has followed the resolutions dated 17.12.2004. In this regard, what needs to be pointed out is that though the Public Notice, dated 21.04.2007, mentions that the applicants may be permitted to use the space measuring in 4' X 4' each, Mr. Chamaria, learned Standing Counsel, GMC, clarifies to this Court that the open space, referred to in the impugned notice, will remain confined to the space, which falls within the said 'L-pattern' area.

9. In view of the above clarifications offered, on behalf of the GMC, there remains no serious challenge to the Public Notice, dated 21.04.2007, so long-as the allotment to be made by the: GMC remains confined, and falls within, the area mentioned in the resolutions, dated 17.12.2004. There is also no dispute that the 60 applicants, who have been selected by the Guwahati Municipal Corporation, are all fruit vendors.

10. As far as private respondents, namely, Greater Guwahati Retail

Fruit Association is concerned, it has not been able to show that in publishing the impugned notice and/or in making selection, the GMC has ignored or violated any of the directions of this Court and/or the GMC's resolutions, which form the subject-matter of this writ petition.

11. Because of what have been indicated above, there survives nothing for decision of this Court except that this Court, now, directs the Guwahati Municipal Corporation that while making allotment to the said 60 selected applicants, the Guwahati Municipal Corporation will not go beyond the space, which the resolution, dated 17.12.2004, permit. Subject to the conditions, so imposed, the Guwahati Municipal Corporation is allowed to make allotment of space to their selected applicants. It is further made clear that in the resolution. No. 4, dated 03.11.2004, the Guwahati Municipal Corporation had decided to make allotment inside the market for the purpose of facilitating access to the the market, for creating an environment-friendly atmosphere and also for improving the overall look of the market. Hence, while making allotment to their said 60 selected applicants, the Guwahati Municipal Corporation shall ensure that the concern expressed by the SAMTC in its resolution No.4, dated 03.11.2004, are not ignored.'

6. Subsequent thereto, the members of the petitioner Association which included the petitioner Nos. 2 to 6 were given permissions for use of open space at the inner side of the railing of the GMC market at Fancy Bazaar. This happened sometime in the year 2020. However, while the members of the

petitioner's association continued to carry on their business, the COVID-19 pandemic resulted and they had to abandon their area in view of the various curbs brought in by the Revenue and Disaster Management Department of the Government of Assam as well as the Ministry of Home Affairs, Government of India. This resulted illegal trespassing by certain person who had no permission to vend within the premises of the inner side of the railing of the GMC Multi-storied building campus.

7. The petitioners thereupon represented before the Respondent Authorities to take appropriate steps for eviction of those unauthorized dwellers so that the petitioners could continue to carry on their business peacefully without any hindrance. However, as nothing was done as alleged by the petitioners, the instant writ petition was filed.

8. This Court has also taken note of the affidavits so filed by both the Respondent Authorities as well as also by the private respondent No. 5. In the affidavit filed by the respondent No. 3, it was mentioned that pursuant to the representation so submitted by the petitioner's Association, the Respondent Authorities have taken due steps and the members of the respondent No. 5 were stopped from trading in the first week of January, 2013 and then again in the second week of May, 2023. It was however mentioned in the affidavit that the licenses of the members of the petitioner's association have also expired and as such the difference between the members of the petitioner association along with the members of the respondent No. 5 had eroded.

9. It is however seen from the affidavit so filed by the respondent No. 5 that the members of the respondent No. 5 are vegetable vendors who are mostly residents of nearby villages of the Guwahati city and they sell vegetables bringing from their respective villages in the early morning and continue their

trade till noon over the vacant spaces by paying taxes to the GMC. It was alleged in the affidavit filed by the respondent No. 5 that as the GMC Authorities caused harassment to them for carrying on their business, they were compelled to file a writ petition being WP(C) No. 7120/2015. It is further seen that the Coordinate Bench of this Court on 20.09.2019 had passed an order thereby directing the GMC Authorities that in the event the land is allotted for specific purpose of accommodating the street vendors in WP(C) No. 6546/2014, the GMC shall consider the accommodation of the members of the respondent No. 5 and the members of the respondent No. 5 shall abide by the terms and conditions to be imposed by the GMC for allowing them to vend on the said allotted land. In addition to that, in the affidavit filed by the respondent No. 5 there is a list enclosed wherein names of certain persons have been mentioned who are unauthorized vendors within the inner railing of the Fancy Bazaar Municipal Market as Annexure 10.

10. This Court has heard the learned counsels appearing on behalf of the parties at length and has given an anxious consideration to the materials on record.

11. Upon hearing these counsels, this Court had inquired with Mr. S. Bora, the learned Standing counsel of the GMC as regards the Fancy Bazaar Municipal Market Multi-storied building as well as the inner side of the railing of the Municipal Market which is the subject matter of consideration before this Court. Mr. S. Bora, the learned Standing Counsel, GMC submitted that pursuant to the fire in the year 1989, the GMC Authorities had constructed a Multi-storied building. The said Multi-storied building stands upon a land which is encompassed by a railing. In the setback areas of the said Multi-storied building, the members of the petitioner association have been granted permission for use

of the open space, and the open space so allotted against each member have been specifically identified with a number. In that regard, he referred to Page 36 of the writ petition which is the Annexure D series and apprise this Court that the petitioner No. 3 was specifically given permission to use the open space No. 87 at the inner side of the railing within the campus of the. GMC Market Complex of Fancy Bazaar.

12. This Court in view of the above, further made inquiries with Mr. S. Bora, the learned Standing Counsel, GMC that if the Multi-storied building and the land encompassing the said Multi-storied building is specifically the property of the GMC, can any other person who have not been permitted be allowed to carry on any business therein. Mr. S. Bora, the learned Standing Counsel, GMC specifically stated that as the property in question specifically belongs to the GMC, permission to vend within the said campus can only be permitted on the basis of a permission to be accorded by the GMC.

13. Upon hearing Mr. S. Bora, the learned Standing Counsel of the GMC this Court had further inquired with Mr. B.D. Goswami, the learned counsel appearing on behalf of the respondent No. 5, as to whether any permission specifically have been given to the members the Association whom he represents. Mr. B.D. Goswami, the learned counsel submitted that there is already an order passed by the Coordinate Bench on 20.09.2019 in WP(C) No. 7120/2015 whereby there are specific directions issued upon the GMC Authorities to provide allotment to the members of the respondent No. 5.

14. At this stage, this Court finds it relevant to observe that the members of the petitioner Association as well as the members of the respondent No. 5 Association clearly stand on different footing *inasmuch* as the members of the petitioner Association were the victims of the 1989 fire incident and there is a

resolution adopted on 17.12.2004 to allot open spaces inside the GMC Multi-storied building campus which form the pattern of alphabet "L". This aspect was also dealt with by this Court in the judgment dated 18.09.2007 quoted herein above. On the other hand, the members of the respondent No. 5 Association were never granted any permission. The order dated 20.09.2019 in WP(C) No. 7120/2015 do not in any manner permit the members of the respondent No. 5 to vend within the campus of the Multi-storied building in question.

15. Upon hearing the learned counsels appearing on behalf of the parties, this Court had taken note of the provisions of the Guwahati Municipal Corporation Act, 1971 and more particularly, Section 104 of the said Act which deals with disposal of municipal property. From a perusal of the said provision, it therefore transpires that without there being any permission given by the Commissioner, no person can vend within the campus of the Guwahati Municipal Market Complex of the Guwahati Municipal Corporation.

16. Taking into account the above, it is the opinion of this Court that without any permission or authority if any person is vending inside the GMC Market Complex in question, the GMC Authorities are required to take steps against those persons. However, this aspect would require carrying out certain verifications by the GMC Authorities.

17. Accordingly, the instant writ petition therefore stands disposed of with the following observations and directions:

(I) The Commissioner, GMC, is directed to carry out necessary verification as to who are the persons who have been granted permission to vend within the inner railing of the Fancy Bazaar, Guwahati Municipal Corporation Market.

Upon carrying out such verification, the GMC Authorities shall take necessary steps as envisaged under law for eviction of those persons who have illegally trespassed inside the campus of inner railing of the Fancy Bazaar, Guwahati Municipal Corporation Market.

(ii) This Court further observes that while carrying out the verification, the Commissioner, GMC shall also issue a public notice asking all the vendors to place necessary materials and show that they have been granted such permission.

(iii) It is further directed that pursuant to such verifications the GMC Authorities shall take necessary steps as required under law so that the persons who have been granted permission to vend/carry out their business with any interference.

(iv) The Commissioner of Police is also directed to provide necessary aid to the GMC Authorities for complying with directions as mentioned above.

JUDGE

Comparing Assistant