

GAHC010231712024



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

Case No. : I.A.(Civil)/3373/2024

KRISHNA CHANDRA DAS AND 2 ORS
SON OF LATE MALI RAM DAS,
SATI JAYMATI ROAD, HOUSE NO. 5,
OPPOSITE GOL- BUILDING, ATHGAON,
GUWAHATI, PIN- 781001, DISTRICT- KAMRUP(M),
ASSAM.

2: RAM CHANDRA DAS
SON OF LATE MALI RAM DAS

SATI JAYMATI ROAD
HOUSE NO. 5

OPPOSITE GOL- BUILDING
ATHGAON

GUWAHATI
PIN- 781001
DISTRICT- KAMRUP(M)

ASSAM.

3: GOPAL CHANDRA DAS
SON OF LATE MALI RAM DAS

SATI JAYMATI ROAD
HOUSE NO. 5

OPPOSITE GOL- BUILDING
ATHGAON

GUWAHATI
PIN- 781001
DISTRICT- KAMRUP(M)

ASSAM

VERSUS

GUWAHATI MUNICIPAL CORPORATION AND ANR
REPRESENTED HEREIN BY ITS COMMISSIONER, ADDRESS- OFFICE OF
GUWAHATI MUNICIPAL CORPORATION, GANESH MANDIR, GANESHGURI,
GUWAHATI, PIN- 781006, KAMRUP(M), ASSAM.

2:ASSISTANT TOWN PLANNER
GUWAHATI MUNICIPAL CORPORATION
OFFICE OF THE GUWAHATI MUNICIPAL CORPORATION

PLANNING BRANCH
GANESH MANDIR

GANESHGURI
GUWAHATI
PIN- 781006

KAMRUP(M)
ASSAM

Linked Case : WP(C)/2790/2024

KRISHNA CHANDRA DAS AND 2 ORS
SON OF LATE MALI RAM DAS

SATI JAYMATI ROAD
HOUSE NO. 5

OPPOSITE GOL- BUILDING
ATHGAON

GUWAHATI
PIN- 781001
DISTRICT- KAMRUP(M)

ASSAM.

2: RAM CHANDRA DAS
SON OF LATE MALI RAM DAS

SATI JAYMATI ROAD
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OPPOSITE GOL- BUILDING
ATHGAON

GUWAHATI
PIN- 781001
DISTRICT- KAMRUP(M)

ASSAM.

3: GOPAL CHANDRA DAS
SON OF LATE MALI RAM DAS

SATI JAYMATI ROAD
HOUSE NO. 5

OPPOSITE GOL- BUILDING
ATHGAON

GUWAHATI
PIN- 781001
DISTRICT- KAMRUP(M)

ASSAM.
VERSUS

GUWAHATI MUNICIPAL CORPORATION AND ANR
REPRESENTED HEREIN BY ITS COMMISSIONER

ADDRESS- OFFICE OF GUWAHATI MUNICIPAL CORPORATION

GANESH MANDIR
GANESHGURI

GUWAHATI
PIN- 781006
KAMRUP(M)

ASSAM.

2:ASSISTANT TOWN PLANNER
GUWAHATI MUNICIPAL CORPORATION
OFFICE OF THE GUWAHATI MUNICIPAL CORPORATION

PLANNING BRANCH
GANESH MANDIR

GANESHGURI
GUWAHATI

PIN- 781006

KAMRUP(M)
ASSAM.

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

For the respondent (s) : Mr. S. Borah, SC, GMC

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
ORDER

13.11.2024

Heard Mr. S. Chamaria, the learned counsel appearing on behalf of the applicants and Mr. S. Borah, the learned counsel appearing on behalf of the Guwahati Municipal Corporation (GMC).

2. The applicants herein are the writ petitioners in WP(C) No.2790/2024 which has already been closed as it has become infructuous in view of certain subsequent events.

3. Be that as it may, it is very pertinent to take note of that pursuant to the notice dated 13.05.2024 which was the subject matter of challenge in WP(C) No.2790/2024, the applicants herein had applied for permission on 07.10.2024 and on the very date, the No Objection Certificate (NOC) for construction had been issued from the Office of the Guwahati Municipal Corporation (GMC). Thereafter on 29.10.2024, the Commissioner,

GMC had issued a notice under Section 337 (1) & 337 (2) of the Guwahati Municipal Corporation Act, 1971 (for short, 'the Act of 1971') on the ground that the applicants failed to submit their NOC and the approved plan for the construction. Pursuant to the said notice, the applicants submitted a reply on 04.11.2024 stating inter-alia that the applicants have been accorded the permission on 07.10.2024, and as such, requested the Commissioner, GMC not to further drop the said proceedings. However, apprehending that action would be initiated under Section 337(3) of the Act of 1971, the instant application was filed seeking certain interim protective measures.

4. Mr. S. Chamaria, the learned counsel appearing on behalf of the applicants submitted that once there is already a permission on 07.10.2024, the entire proceedings sought to be initiated vide the notice 29.10.2024 is contrary to the provision of Section 337(4) of the Act of 1971. He, therefore, submitted that such proceedings so initiated vide the notice dated 29.10.2024 is on the face of it without jurisdiction and authority and in that regard had referred to a judgment of the learned Division Bench of this Court in the case of ***T. R. Kapoor vs. Guwahati Municipal Corporation & Another***, reported in ***1988 (2) GLR 339***.

5. Mr. S. Borah, the learned counsel appearing on behalf of the respondent GMC submitted that a notice dated 29.10.2024 was

issued on the ground that the applicants did not submit any NOC and the approved plan pursuant to the notice issued on 13.05.2024. He submitted that even prior to passing any order under Section 337(3) of the Act of 1971, the applicants had approached this Court by filing the instant application. He further submitted that as to whether the reply of the applicants was taken into consideration and what the Commissioner, GMC proposes on the basis of the said reply are things within the jurisdiction of the Commissioner, GMC and as such, the instant proceedings is premature. He further submitted that the proceedings so initiated under Section 337 of the Act of 1971 vide the notice dated 29.10.2024 is a substantive proceedings for which the applicants are required to file a separate proceedings and not by way of a miscellaneous proceedings to a writ proceedings which only pertained to the issuance of a notice dated 13.05.2024 seeking certain documents.

6. This Court having heard the learned counsel appearing on behalf of the applicants is of the opinion that the proceedings so initiated vide the notice dated 29.10.2024 is a separate and a substantive proceedings which cannot be challenged by way of an Interlocutory Application and the same can only be challenged in the manner otherwise provided under law or by way of filing a separate writ petition.

7. Though the submissions made by the counsels appearing on behalf of the parties have been duly noted herein above, this Court is of the opinion that the applicants herein should be given an opportunity to challenge the said action initiated in terms with the notice dated 29.10.2024 by challenging the same in accordance with law.

8. This Court has also taken note of the submission of Mr. S. Chamaria, the learned counsel appearing on behalf of the applicants that the interim order which was passed by this Court on 06.11.2024 may be continued for some time so that the applicants can avail the appropriate remedies against the proceedings initiated vide the notice dated 29.10.2024. The said submission, in the opinion of this Court, is reasonable and accordingly, this Court directs that the order dated 06.11.2024 passed in I.A.(C) No.3370/2024 shall continue till 25.11.2024. The applicants, in the meantime, can take appropriate steps against the said notice.

9. In view of the above, the instant I.A. stands disposed of.

JUDGE

Comparing Assistant