

GAHC010234162022



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

Case No. : WP(C)/7328/2022

RAMAKANT SHARMA @ SONU SHARMA
S/O LT JUGAL KISHOR SHARMA R/O JEET APARTMENT JATIA
KAHILIPARA, GUWAHATI-781006 DIST. KAMRUP (M) ASAM THE SOLE
PROPRIETOR OF NATH G SWEETS, JATIA KAHILIPARA MAIN ROAD
OPPOSITE TO STATE BANK OF INDIA KAHILIPARA BRANCH, GUWAHATI-
781006

VERSUS

GUWAHATI MUNICIPAL CORPORATION AND 5 ORS.
REP. BY ITS COMMISSIONER BHANGAGARH GUWAHATI-781005

2:MAYOR
GUWAHATI MUNICIPAL CORPORATION
UZANBAZAR GUWAHATI-781001

3:COMMISSIONER
GUWAHATI MUNICIPAL CORPORATION
BHANGAGARH
GUWAHATI-781005

4:MAYOR IN COUNCIL
GUWAHATI MUNICIPAL CORPORATION (APPEAL)
UZANBAZAR
GUWAHATI-781001

5:ASSOCIATE PLANNER
GUWAHATI MUNICIPAL CORPORATION (APPEAL)
UZANBAZAR
GUWAHATI-781001

6:PRESIDENT

KIRONHANS ENCLAVE SOCIETY
JATIA KAHILIPARA GUWAHATI-78100

Advocate for the Petitioner : MR. DITUL DAS, MR. R RAHMAN

Advocate for the Respondent : SC, GMC, MR. S DUTTA (r-6),MR. H DAS (r-6),S HAQUE (r-6)

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 03.09.2024

Heard Mr. D Das, learned counsel for the petitioner. Also heard Mr. S Bora, learned standing counsel, GMC appearing for all the respondents.

The present writ petition is filed being aggrieved by an order dated 09.11.2022 passed by the respondent No.4, whereby the appellate authority i.e., Mayor-in-Council, under the GMC Act has directed the Planning Branch of Guwahati Municipal Corporation to start procedure as per the GMC Act to demolish the extended portion of the constructed shed of the shop of the petitioner. The further prayer made in this writ petition is a direction to the respondent Municipal Corporation to regularize the construction (shed) carried out by the petitioner.

The admitted facts as discernible from the records available is that the petitioner purchased three shops i.e., shop No.2, 3 and 4 from one builder namely, M/S Shiv Realtors. Clause 5 of the sale deed also describes that the purchaser shall have exclusive right of use of 1018 sq.ft open area in front of the shops for his own business purpose subject to own statutory provision.

It was further declared that such open space shall not be used for parking or any other purpose which will create hindrance or obstacles to the

purchaser in his business. The schedule of the sale deed further describes the said area to be an open area. The building permission on the basis of which such building was constructed by the builder, also shows that there are shops in the ground floor. Admittedly, the petitioner has constructed a shed which according to the petitioner is a semi permanent construction. It is also an admitted position that the petitioner has not taken any permission for construction of such shed.

In the aforesaid backdrop, the respondent No.6, the President of the Resident Association of the Building lodged a complaint before the GMC authority that the petitioner has made a construction of semi permanent shed in front of the said apartment.

On receipt of such complaint, the Associated Planner, Guwahati Municipal Corporation by a communication dated 26.09.2022 asked the petitioner to produce the No Objection Certificate and approved plan in respect of the shop and the construction undertaken. By a reply dated 30.09.2022, amongst others, the petitioner intimated the Commissioner, Guwahati Municipal Corporation that the construction is purely temporary and is not hampering the commuting public in their daily life but helping the public consumer.

It was the further stand of the petitioner that No Objection Certificate for the said construction is inherent and inbuilt in the registered sale deed of the shop and therefore, the Guwahati Municipal Corporation is having prior knowledge of it. A stand was further taken that all evidence including circumstantial and documentary shall be produced as and when proper notice is being served.

While the matter was still pending before the authority, the petitioner preferred an appeal before the Chairman, Guwahati Municipal

Corporation for regularization of the construction of shed and wall. In the said application it is seen that the petitioner sought permission for regularization of the constructed permanent shed and wall in the east front of the commercial shop situated at Jatiya for conducting his business properly and safely. Such prayer was rejected by the Mayor-in-Council (appellate authority) by its order dated 09.11.2022, with a direction to the Planning Branch to start the procedure as per the GMC Act to demolish the extended portion of the constructed shed of the petitioner's shop and the aluminum partition wall constructed attached to the garage.

Thereafter, the petitioner preferred an application seeking review of such order. While the matter was pending at that stage, a notice was issued on 15.11.2022 under section 337(1), (2) of the Gauhati Municipal Corporation Act, 1971, in terms of the appellate authorities order dated 09.11.2022.

From the aforesaid, it is seen that the appellate authority has directed the competent authority to proceed in accordance with the provision of the GMC Act, 1971 and accordingly, the Additional Commissioner, Guwahati Municipal Corporation has issued the notice dated 15.11.2022. However, admittedly the petitioner has not yet replied to such notice.

It is contended by the learned counsel for the petitioner that the notice dated 15.11.2022 was received by him when the writ petition was moved and therefore, he could not file a reply.

It is seen from the record that a notice has been issued to the petitioner to support his case and it is also seen that the petitioner has approached the appellate authority without there being any cause of action inasmuch as at that stage, no decision was yet taken. However, as the appellate authority has asked the Guwahati Municipal Corporation to act as

per the GMC Act, this court do not find any infirmity in such order, nor it finds any infirmity in the notice dated 26.09.2022, inasmuch as the petitioner was given a chance by issuing such notice and no determination was taken at this stage. In fact no determination has been made till today and the petitioner was given a notice on 15.11.2022.

That being the position, this court cannot determine the factum of the present case involving whether the construction is illegal or the same can be regularized or whether it is a semi permanent construction.

Therefore, in the considered opinion of this court, taking note of the principles of natural justice, it is provided that the petitioner may reply to notice dated 15.11.2022 within a period of two weeks from today and on the basis of such reply, the Municipal Authority shall be at liberty to act in accordance with the provisions of the GMC Act and Bye-laws framed thereunder.

With the aforesaid observation, the present writ petition stands disposed of.

Till the final order passed, the status quo as on today shall be maintained, however, it is made clear that if the application is not made within 15 (fifteen) days from today, the GMC authorities shall be at liberty to proceed with the matter ex-parte.

JUDGE

Comparing Assistant