

GAHC010244812024



2024:GAU-AS:11542

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

Case No. : WP(C)/6106/2024

KRISHNA CHANDRA DAS AND 2 ORS
S/O- MALI RAM DAS,
R/O- SATI JAYMATI ROAD, H.NO-05, OPP. GOI-BUILDING, ATHGAON,
GUWAHATI, PIN-781001, DIST- KAMRUP (M), ASSAM

2: RAM CHANDRA DAS
S/O- MALI RAM DAS

R/O- SATI JAYMATI ROAD
H.NO-05
OPP. GOI-BUILDING
ATHGAON
GUWAHATI
PIN-781001
DIST- KAMRUP (M)
ASSAM

3: GOPAL CHANDRA DAS
S/O- MALI RAM DAS

R/O- SATI JAYMATI ROAD
H.NO-05
OPP. GOI-BUILDING
ATHGAON
GUWAHATI
PIN-781001
DIST- KAMRUP (M)
ASSA

VERSUS

GAUHATI MUNICIPAL CORPORATION AND ANR
REP. BY THE COMMISSIONER, O/O THE GAUHATI MUNICIPAL
CORPORATION, GANESH MANDIR

GANESHGURI, GUWAHATI-06, KAMRUP(M), ASSAM

2:ASSISTANT TOWN PLANNER
GAUHATI MUNICIPAL CORPORATION

O/O THE GAUHATI MUNICIPAL CORPORATION
PLANNING BRANCHGANESH MANDIR
GANESHGURI
GUWAHATI-06
KAMRUP(M)
ASSA

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

For the Respondent(s) : Mr. S. Bora, Standing Counsel

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 20.11.2024

Heard Mr. S. Chamaria, the learned counsel appearing on behalf of the Petitioner and Mr. S. Borah, the learned Standing counsel appearing on behalf of the GMC.

2. The Petitioners herein have approached this Court assailing the notice dated 29.10.2024 issued by the Commissioner, Guwahati Municipal Corporation pursuant to the leave granted to the Petitioners in the order dated 13.11.2024 passed in I.A.(Civil) No.3373/2024 arising out of WP(C) No.2790/2024.

3. From the materials on record, it transpires that the Petitioners were initially issued a notice on 13.05.2024 by the Assistant Town Planner asking the Petitioners to produce the NOC. The Petitioners challenging the jurisdiction of the Assistant Town Planner had filed the writ petition being WP(C) No.2790/2024. During the pendency of the writ petition, the

Petitioners obtained No Objection Certificate for construction on 07.10.2024.

4. Be that as it may, without taking notice of this permission obtained on 07.10.2024, a notice was issued on 29.10.2024 on the ground that the Petitioners failed to submit any No Objection Certificate as well as the approved plan pursuant to the letter dated 13.05.2024. It is further seen that the Petitioners had submitted a reply on 04.11.2024 stating inter alia that the Petitioners now have the permission dated 07.10.2024.

5. In addition to that, it is the specific case of the Petitioners that in view of Section 337(4) of the Guwahati Municipal Corporation Act, 1971 (for short the "Act of 1971"), the proceedings under Section 337 of the Act of 1971 cannot be initiated inasmuch as the Petitioners have a No Objection Certificate as well as the approved plan. This aspect was brought to the notice of the Commissioner, GMC vide the reply on 04.11.2024. It is seen that the Commissioner, GMC is yet to decide the said proceedings.

6. Mr. S. Chamaria, the learned counsel appearing on behalf of the Petitioners submitted that the Petitioners taking into consideration the manner in which the GMC Authorities are after the Petitioners, an apprehension has arisen that on any day, an order would be passed under Section 337(3) of the Act of 1971 and thereupon, the Petitioners' building would be demolished. He further submitted that the Petitioners should be afforded a personal hearing before passing such order.

7. Mr. S. Borah, the learned Standing counsel for the GMC Authorities submitted that the Commissioner, GMC have not passed any order

pursuant to the reply submitted on 04.11.2024. He submitted that at this stage, the question of interference by this Court ought not to be made taking into account that the matter is still pending before the Commissioner, GMC. He further submitted that the Commissioner, GMC shall consider the reply submitted by the Petitioners on 04.11.2024 in accordance with law.

8. Taking into account the above submissions, this Court is of the opinion that as the Commissioner, GMC is still seized with the matter, it would not be proper on the part of this Court to entertain the writ proceedings at this stage. However, this Court cannot also be unmindful of the apprehension of the Petitioners.

9. Accordingly, this Court disposes of the instant writ petition at the motion stage itself with the following observations and directions.

(i) The Commissioner, GMC shall afford an opportunity of hearing to the Petitioners by fixing particular date and time before passing any orders pursuant to the notice dated 29.10.2024.

(ii) This Court further taking into account the recent judgment of the Supreme Court in the case of ***In Re: Directions in the matter of Demolition of structures reported in 2024 SCC OnLine SC 3291***, directs that for a period of 15 days from the date of service of the order upon the Petitioners, no actions be taken, if any order is passed under Section 337(3) of the Act of 1971.

JUDGE

Comparing Assistant