

GAHC010077942020



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

Case No. : WP(C)/7892/2019

RAMJI SINGH
S/O- LATE MANGAL SINGH
R/O- GMC HOSPITAL ROAD
BHANGAGARH
P.S- BHANGAGARH
GUWAHATI- 05
DIST- KAMRUP (M)
ASSAM

VERSUS

THE STATE OF ASSAM AND 6 ORS
REP. BY THE SECRETARY TO THE GOVT OF ASSAM
DISPUR
GUWAHATI- 06

2:THE COMMISSIONER AND SECRETARY
GUWAHATI DEVELOPMENT DEPTT
DISPUR- 06

3:THE GUWAHATI MUNICIPAL CORPORATION
REP. BY ITS COMMISSIONER
HAVING ITS OFFICE AT PAN BAZAR
GUWAHATI- 01
ASSAM

4:THE COMMISSIONER
GUWAHATI MUNICIPAL CORPORATION
PAN BAZAR
GUWAHATI- 01
ASSAM

5:THE DEPUTY COMMISSIONER
GUWAHATI MUNICIPAL CORPORATION
PAN BAZAR
GUWAHATI- 01
ASSAM

6:THE ASSOCIATE PLANNER
GUWAHATI MUNICIPAL CORPORATION
PAN BAZAR
GUWAHATI- 01
ASSAM

7:M/S ASMI COMMERCIALS PVT LTD
REP. BY ITS DIRECTOR SRI SATYENDRA MOHAN DASTIDAR
R/O- H NO. 16
3RD FLOOR
SRINAGAR MAIN ROAD
GUWAHATI- 5
DIST- KAMRUP

Advocate for : MR. B D DEKA
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 6 ORS

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

For the Respondent(s) : Mr. S. Bora, GMC
Mr. B. Pathak, Advocate

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 04.11.2024

Heard Mr. M. Das, the learned counsel appearing on behalf of the petitioner. Mr. S. Bora, Standing Counsel appears on behalf of the GMC and Mr. B. Pathak, the

learned counsel appears on behalf of the respondent No. 7.

2. The petitioner herein is aggrieved by the order dated 28.09.2019 whereby the Commissioner, Guwahati Municipal Corporation (for short, GMC) had passed the order under Sections 337 (3) and 337A(1) of the GMC Act, 1971 (for short the Act of 1971) whereby there was a direction for demolishing/sealing the unauthorized construction.

3. The case of the petitioner herein is that the order dated 29.08.2019 clearly shows that the said order was passed without proper application of mind and, as such, the impugned order is required to be interfered with.

4. It is further seen from the materials on record that the petitioner was issued a notice on 01.08.2019 by the Commissioner, GMC, whereby it was informed that on 17.05.2019 another notice was issued to which the petitioner had not responded. Further to that, the petitioner was asked to give an explanation as regards the unauthorized construction of the RCC building. It is further seen that pursuant thereto, the petitioner had submitted a reply on 06.08.2019 wherein it was categorically mentioned that the petitioner was granted a building permission bearing NOC No. GPL/551/84/8 dated 21.09.1984. It was further mentioned that on the earlier occasion also in the year 2015, another similar notice was issued and the petitioner had duly submitted a reply. In addition to that, the petitioner has also mentioned that the petitioner had never constructed any building without obtaining permission and it appears that time and again the petitioner had been harassed at the behest of certain vested interested person.

5. A perusal of the impugned order shows that the Commissioner, GMC has not taken into consideration the reply, inasmuch as, there is not a single

reference as regards the permission bearing NOC No. GPL/551/84/8 dated 21.09.1984 which has been duly referred to in the reply submitted by the petitioner.

6. In addition to that, it is also seen from Annexure 1 to the writ petition that the petitioner had enclosed the said permission. A perusal of the said permission shows that the petitioner was granted the permission and an application was filed on 03.08.1984. It also shows that to the permission there is an approved plan.

7. Taking into account, that the impugned order dated 29.08.2019 have not dealt with the reply of the petitioner, this Court is of the opinion that the impugned order dated 29.08.2019 suffers from non-application of mind and accordingly the same is set aside and quashed.

8. This Court further takes note of the submission of Mr. S. Bora, the learned counsel appearing on behalf of the GMC, who submits that the petitioner be directed to submit a clear copy of the permission which have been enclosed to the writ petition along with the approved plan which have been duly mentioned in the permission itself before the Commissioner GMC, so that the notices which were issued on 01.08.2019 by the Commissioner GMC could be brought to a logical conclusion.

9. This Court upon giving an anxious consideration is of the opinion that in order that the Commissioner, GMC could decide as to whether there is a permission or not there is a requirement that the petitioner should submit a better copy of the permission and further also produce the approved plan which forms a part of the permission. Accordingly, the petitioner is given the liberty to submit a better copy of the permission along with the approved plan within

10(ten) days from the date of the instant order. On the basis of the said documents being submitted, the Commissioner GMC, shall decide the proceedings initiated on the basis of the notice dated 01.08.2019. It is however, made clear that in the circumstances such documents are not placed, the Commissioner, GMC shall decide the proceedings by making necessary enquiry as to whether such permission bearing No. GPL/551/84/8 dated 21.09.1984 was at all issued.

10. With the above observations and directions, the instant writ petition stands disposed.

JUDGE

Comparing Assistant