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

Case No. : WP(C)/6648/2024

BHABA KANTA NATH
S/O LATE SUNDAR NATH, R/O SUPRIYA RESIDENCY, BASISTHAPUR BYE
LANE-II, BELTOLA, GUWAHATI-781028, DIST- KAMRUP (M), ASSAM

VERSUS

THE GUWAHATI METROPOLITAN DEVELOPMENT AUTHORITY AND 2 ORS
STATFED BUILDING, 3RD FLOOR, GMCH ROAD, BHANGAGARH,
GUWAHATI-781005, ASSAM REPRESENTED BY ITS CHIEF EXECUTIVE
OFFICER

2:M/S SUPRIYA CONSTRUCTION
REPRESENTED BY SHRI NISHANTA GOSWAMI
HAVING ITS OFFICE AT 22A
A.T. ROAD
BHARALUMUKH
GUWAHATI-781009
DIST- KAMRUP (M)
ASSAM

3:ANANTA DEB SARMA
S/O LATE NARANATH SHARMA
R/O SUPRIYA RESIDENCY
BASISTHAPUR BYE LANE-II
BELTOLA
GUWAHATI-781028
DIST- KAMRUP (M)
ASSA

Advocate for the Petitioner : MR. M K CHOUDHURY, MS S DEV,MR. M DUTTA

Advocate for the Respondent : SC, G M D A,

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

10-12-2024

Heard Mr. M.K. Choudhury, learned Senior Counsel assisted by Mr. M.K. Dutta, learned counsel for the petitioner. Also heard Mr. S. Bora, learned Standing Counsel, GMDA for the respondent no.1.

2] This writ petition is directed against the order dated 13-11-2024 passed in Reat/Assam/Appeal No.20 of 2024. The case projected before this Court by the petitioner is that the petitioner is the owner of an apartment situated in the ground floor of a construction undertaken by *M/S Supriya Constructions*, who is the respondent no.2 herein. The said apartment is in the building under the name and style "Supriya Residency" located at village Hatigaon, Mouza Beltola, Revenue Circle Dispur, in the District of Kamrup(M), Assam. It is submitted on behalf of the petitioner that the petitioner although has occupied the said apartment after the payment of the consideration on 01-04-2022, however, the occupancy certificate which was required to be granted to the petitioner was not issued by the GMDA as the landowner declined to put his signature in the application for the occupancy certificate until the deviations in the construction of the real estate project are duly ratify by the promoter/builder. Learned Senior Counsel for the petitioner submits that the deviation in the construction pertains to the ground floor relating to the parking area. As the occupancy certificate was not issued, the petitioner filed a complaint before the Real Estate Regulatory Authority (RERA). The respondent no.2 namely, *M/S Supriya Constructions* also filed a similar application.

3] The RERA by order dated 02-07-2024 imposed a fine of Rs.2,00,000/- (Rupees Two Lakhs) on the said builder, namely, *M/S Supriya Construction* for continuous violation. Being aggrieved, the respondent no.2, namely, *M/S Supriya Construction* preferred an appeal before the Assam Real Estate Appellate Tribunal (hereinafter refers to as the 'Tribunal') at Guwahati being REAT/Assam/Appeal No.20/2024, whereby the order dated 13-11-2024, the Tribunal while directing the appeal to be listed on the 12-12-2024, also directed the respondent before the Tribunal, more particularly, the GMDA to carry out necessary exercise in terms of its directions contained in the letter dated 29-09-2023 so as to end the stalemate involving the initiation of due process for grants of Occupancy Certificate. It was further directed that any date fixed for carrying out the demolition exercise by the GMDA shall be intimated in advance to the appellant as well as to the respondent no.1.

4] In terms of this order by order dated 06-12-2-24, the GMDA intimated the respondent nos. 2 & 3 about the proposed demolition of the violated portion of G +3 building of Ananta Dev Sarmah, Near Prabash Atithi Griha, Basisthapur, Byelane No.2, Beltola-Basistha Road, Guwahati-38 on 11-12-2024 from 10.00 A.M. onwards.

5] Learned Senior Counsel for the petitioner submits that a copy of impugned order and notice was served on the petitioner/appellant by the builder. The grievance of the petitioner before the Court is that while there is no quarrel with regard to the imposition of penalty on the builder, namely, respondent Nos. 2 & 3, the direction of the Tribunal to carry out the demolition by the GMDA will seriously prejudice the interests of the present petitioner as the ground floor portion which is stated to have been constructed in violation of the original building plan has been purchased by the petitioner and is presently used as his

office. Under such circumstances, the petitioner is before the Court.

6] Mr. S. Bora, learned Standing Counsel, GMDA submits that the Tribunal ought to have been made a party and to the best of his knowledge, the Tribunal is represented by its Standing Counsel.

7] Insofar as the proposed demolition is concerned he submits that this is in terms of the Tribunal order and therefore, as notified the demolition is due to be carried out tomorrow i.e. on 11-12-2024 from 10.00 A.M. onwards as the Tribunal directed the GMDA to comply with the order and submit a report.

8] Learned counsel for the parties have been heard and the writ petition and its enclosures have been carefully perused. On careful perusal of the papers before this Court it is seen that in the appeal which is preferred before the Tribunal by the respondent no.2 being Reat/Assam/Appeal No.20 of 2024, the present petitioner is shown as the respondent no.2. There is no specific pleading in the writ petition as to why the petitioner did not project his case before the Tribunal. The order impugned in the present proceeding was passed on 13-11-2024 and the writ petition was filed only on 09-12-2024 which is 2 days before the proposed date of demolition as directed by the REAT. Learned Senior Counsel appearing for the petitioner fairly submits that he has no instructions in the matter. From careful perusal of the order dated 13-11-2024 it is seen that there is already an order of the GMDA whereby the deviations were required to be demolished as was informed by its communication to the builder. One of the questions before the Tribunal was also the non issuance of the occupancy certificate which was raised before the RERA by the writ petition. The finding of the Tribunal is that the non occupancy certificate not being issued was on the ground of the landowner refusing to sign in a joint signature till the builder removes the deviations as per the approved plan. Under such

circumstances, by the order impugned in the present writ petition, the direction was issued to carry out the demolition by the GMDA and file a compliance report. The appeal is fixed on 12-12-2024.

9] There is no explanation as to why the writ petitioner before the Court although having been arrayed as a party respondent no. 2 before the Tribunal, there is no averment as to why the petitioner did not appear before the Tribunal and presented his case. Learned Senior Counsel in response to the query put by the Court submitted that the appeal was against the imposition of fine on the builder and therefore, the petitioner was primarily not affected by the order dated 02.07.2024 passed by the RERA.

10] Be that as it may, the fact remains that the petitioner was arrayed as a party. There is no averment that no notice was issued by the Tribunal before issuance of the impugned order dated 13-11-2024. There is no explanation as to why the petitioner could not or did not present his case before the Tribunal and as a consequence of which the order dated 13-11-2024 came to be issued. There is also no explanation as to why the order dated 13-11-2024 is being put to challenge in the present proceedings which was filed only on 09-12-2024 challenging the proposed demolition to be undertaken tomorrow which is 11-12-2024 in terms of the order dated 06-12-2024 issued by the GMDA. In the absence of such specific facts pleaded before this Court, this Court is disinclined to entertain the writ petition in the present form. However, considering the hardship projected by the petitioner in the event the demolition is undertaken in respect of the apartment which the petitioner claims to have purchased from the respondent nos.2 & 3, this Court permits the petitioner to approach the Assam Real Estate Appellate Tribunal, Guwahati for modification or recall of the impugned order dated 13-11-2024.

11] In view of the urgency expressed, a true copy of this order shall be issued by the Court Master of this Court under the signature of the Court Master.

JUDGE

Comparing Assistant