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

Case No. : WP(C)/7620/2023

BIJOY KRISHNA DAM
SON OF LATE ANIL RANJAN DAM,
RESIDENT OF LONGAI ROAD, WARD NO. 2 (OLD)/ 3 (NEW),
POST OFFICE- SETTLEMENT ROAD,
DISTRICT- KARIMGANJ, ASSAM,
PINCODE- 788712.

VERSUS

THE KARIMGANJ MUNICIPAL BOARD AND 4 ORS
REPRESENTED BY THE EXECUTIVE OFFICER,
KARIMGANJ, ASSAM.

2:THE EXECUTIVE OFFICER
KARIMGANJ MUNICIPAL BOARD
REPRESENTED BY THE EXECUTIVE OFFICER
KARIMGANJ
ASSAM.

3:THE CHAIRMAN
KARIMGANJ MUNICIPAL BOARD
KARIMGANJ
ASSAM.

4:BIKRAM CHASA
ACS
THE THEN EXECUTIVE OFFICER

KARIMGANJ MUNICIPAL BOARD

KARIMGANJ
ASSAM.

PRESENTLY POSTED AS EXTRA ASSISTANT COMMISSIONER

OFFICE OF THE DEPUTY COMMISSIONER
KAMRUP(METROPOLITAN)

HENGRABARI
GUWAHATI
ASSAM.

5:RABINDRA CHANDRA DEB
CHAIRMAN
KARIMGANJ MUNICIPAL BOARD

KARIMGANJ
ASSAM.

6:NABA KISHORE DEB
SON OF GOBINDA DEB
RESIDENT OF-LONGAI ROAD
PO.-SETTLEMENT ROAD
PS AND DISTRICT-KARIMGANJ
ASSAM
PIN-788712

7:SAMPA DEB ROY
DAUGHTER OF GOBINDA DEB

RESIDENT OF-LONGAI ROAD
PO.-SETTLEMENT ROAD
PS AND DISTRICT-KARIMGANJ
ASSAM
PIN-788712

8:SHWASTI DEB PANDIT
DAUGHTER OF GOBINDA DEB

RESIDENT OF-LONGAI ROAD
PO-SETTLEMENT ROAD
PS AND DISTRICT-KARIMGANJ
ASSAM
PIN-788712

9:SUSMITA DEB (DEY)
DAUGHTER OF GOBINDA DEB
RESIDENT OF-LONGAI ROAD
PO-SETTLEMENT ROAD
PS AND DISTRICT-KARIMGANJ
ASSAM

PIN-78871

Advocate for the Petitioner : MR. S BANIK, MS F BEGUM

Advocate for the Respondent : MR. D NATH (R-4), MD F FARIDI (R-3,5),MISS S ROY (R-3,5),MR. A DHAR (R-3,5),MR D KALITA (R-4)

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

28.11.2024

Heard, Mr. S. Banik, learned counsel for the petitioner. Also heard Mr. A. Dhar, learned counsel for the respondent Nos. 1, 3 and 5, Mr. N. Goswami, learned counsel for the respondent No. 2, Mr. D. Nath, learned counsel for the respondent No.4 and Mr. S.K. Ghosh, learned counsel for the respondent Nos. 6, 7, 8 and 9.

This writ petition is filed seeking an order from this Court directing the respondent, namely the Karimganj Municipal Board, along with its Chairman and Executive, to pass a final order on the representation dated 04.10.2023 submitted to the Karimganj Municipal Board. The grievance arose from a complaint lodged regarding a construction carried out by the predecessor of the private respondents, who are neighbors of the writ petitioner. The schedule of land is reflected in the writ petition. The grievance is that the predecessor of the private respondent constructed a building on a plot in such a manner that it affects the Northern boundary wall of the land belonging to Sri. Sanjoy Kumar Dam (the brother of the petitioner). The petitioner is the power of attorney holder for Sri Sanjoy Kumar Dam. The petitioner, aggrieved by the manner in

which the construction is proceeding, approached the authorities by filing a complaint dated 22.11.2021. In the complaint, the petitioner brought to the notice of the authorities that the construction was being carried out in violation of rules and procedures. The complaint was duly lodged and forwarded to the Executive Officer of Karimganj Municipal Board, the Deputy Commissioner (DC) of Karimganj, and the Circle Officer of Karimganj, with a prayer for the issuance of appropriate orders to address the violations. However, since no action was taken on the complaint, the petitioner approached this Court by filing WP(C) 1749 of 2022, seeking a direction to the official respondents to take immediate action on the complaint dated 22.11.2021. In the said writ petition, one Sri. Govinda Deb was arrayed as a private respondent. However, during the proceedings of the writ petition, on a submission made on behalf of the respondent, it was stated that Sri. Govinda Deb was not the owner of the property and that the actual owner was his deceased wife. In light of this submission, the Court, by order dated 20.01.2023, was pleased to strike off the name of Sri. Govinda Deb from the array of respondents. By order dated 20.01.2023, the Court disposed of the writ petition, granting the petitioner liberty to file a representation before the Executive Officer of the Karimganj Municipal Board for the examination of the grievance raised in the petitioner's complaint dated 22.11.2021. The petitioner was directed to file the representation within 10 days from the date of the order. Upon receipt of such representation, the Executive Officer of Karimganj Municipal Board was directed to hear both the petitioner and the owner of the construction being carried out by the petitioner's neighbor, and to dispose of the representation within 6 weeks from the date of receipt of the certified copy of the order.

Pursuant to the direction of this Court, the petitioner submitted a representation dated 18.02.2023, which was duly received by the concerned office. Upon receipt of the representation, the Karimganj Municipal Board issued notices to both the petitioners and Sri Govinda Deb, the owner of the aforementioned property. The petitioner objected to this on the grounds that the name of Sri. Govinda Deb was struck off from Writ Petition No. 1749 of 2022 by the Court, based on the submission made on behalf of Mr. Deb that he was not the owner of the property. Consequently, the petitioner argued that there was no necessity for the presence of Sri. Govinda Deb at the hearing of the matter to be conducted by the Executive Officer. However, when the authority insisted on issuing a notice to Sri. Govinda Deb, the petitioner approached this Court again by filing WP(C) 2405 of 2023. By order dated 04.05.2023, this Court, while issuing notice, directed that the communication issued by the Karimganj Municipal Board on 26.04.2023 shall not be acted upon. However, the Karimganj Municipal Authority proceeded with the matter by issuing notice dated 10.05.2023 to the sons and daughters of the late Smt. Subha Rani Deb, wife of Govinda Deb, asking them to produce all necessary documents. The sons and daughters are named as private respondents 6 to 9. The petitioner, aggrieved by the proceedings of the Karimganj Municipal Board, filed a contempt petition being case No. 441 of 2023. During the pendency of WP(C) 2405/2023 and Contempt Case No. 441 of 2023, a notice dated 30.08.2023 was issued by the Karimganj Municipal Board, exercising jurisdiction under Section 177 of the Assam Municipal Act, 1956, directing the present private respondents to demolish the deviated/unauthorized portion of the construction within 30 days. Following the issuance of the demolition notice, which was presented before the Court, WP(C) 2405/2023 and Contempt Petition No. 441 of 2023

were closed. However, in terms of the demolition order issued by the Karimganj Municipal Board on 30.08.2023, no steps were taken by the building's owners to demolish the deviated or unauthorized portion.

It is submitted before the Court that, pursuant to the order passed, the petitioner became aware that the demolition order, which was stated to have been issued by the Executive Officer of the Karimganj Municipal Board, had actually been withdrawn by the Board on 01.09.2023, prior to the date of issuance. The withdrawal of this demolition order was never brought to the Court's attention by the concerned Executive Officer at the time the Court was addressing the matters. It is further submitted that, by the order dated 01.09.2023, the Karimganj Municipal Board, in its meeting, declared the notice dated 30.08.2023 issued by the Executive Officer to be null and void.

The present writ petition has been filed by the petitioner, aggrieved by the inaction of the Karimganj Municipal Board. Despite the decision taken by the Board on 01.09.2023, declaring the notice dated 30.08.2023 issued by the Executive Officer to be null and void, no steps have been taken to address the petitioner's grievance or pass appropriate orders. Therefore, the petitioner seeks a direction for the disposal of his representation dated 04.10.2023, based on the material available before the Municipal Board. Additionally, the petitioner initially sought the initiation of suo motu contempt proceedings against the private respondents for the willful suppression of facts and misrepresentation before the Court, leading to the closure of WP(C) No. 2405 of 2023 and Contempt Case No. 441 of 2023. However, the learned counsel for the petitioner has submitted that, at present, he has instructions not to pursue the prayer for suo motu contempt.

He requests that the writ petition be closed with a direction to the Karimganj Municipal Board to pass appropriate orders on the petitioner's representation dated 04.10.2023 as expeditiously as possible.

Both parties are represented by their respective counsel but no counter-affidavit has been filed by the respondents. The counsel for the respondents submits that the power to consider and pass appropriate orders regarding any unauthorized deviations in construction made pursuant to the sanction granted by the Municipal Board, is vested in the Municipal Board only under Section 177 of the Assam Municipal Act. The counsel for the private respondents further submits that, if a direction is issued to the Municipal Board to pass orders on the representation filed by the petitioner, private respondents and all other affected parties should also be heard before passing any orders.

The learned counsel for the parties have been heard and the writ petition along with the enclosures has been perused, along with the relevant provisions of the Act. The limited prayer in the writ petition seeks disposal of the representation dated 04.10.2023. A perusal of the representation reveals that it is addressed to the Executive Officer of the Karimganj Municipal Board. Under Section 177 of the Assam Municipal Act, it is only the Municipal Board which is vested with the authority to pass appropriate orders regarding violations or deviations from the sanctioned construction or direction of construction. This representation has been duly received by the Office of the Executive Officer of the Karimganj Municipal Board. Furthermore, by communication dated 19.10.2023, the Executive Officer has already brought this matter to the notice of the Chairman of the Karimganj Municipal Board. Thus, while the

representation was addressed to the Executive Officer, it had been duly forwarded to the Chairman of the Karimganj Municipal Board by the Executive Officer of the Board. Therefore, it is seen that the representation filed by the petitioner is already before the Chairman, Karimganj Municipal Board who ought to have taken appropriate steps to have it placed before the Board.

Be that as it may, in the light of the powers vested in the Municipal Board, this Court deems it appropriate to close the writ petition with a direction to the Karimganj Municipal Board to address the grievances raised by the petitioner in his representation dated 04.10.2023, which has been forwarded to the Chairman by the Executive Officer's communication dated 19.10.2023. The Municipal Board shall hear all affected parties, examine the relevant documents and if necessary, call for a report, and thereafter pass appropriate orders on the representation.

Since all counsels have already appeared, we direct both the petitioner and the private respondents to appear before the Municipal Board on 16.12.2024, so that the Municipal Board may proceed with the hearing of the matter without further delay

The Municipal Board will endeavor to dispose of the representation as early as possible, but in any case, no later than 45 days from the date the parties are directed to appear before the Municipal Board, which is 16.01.2025. The parties are also directed to present a certified copy of the order at that time.

With the above directions the writ petition stands disposed of.

JUDGE

Comparing Assistant