GAHC010123882026

2026:GAU-AS:15190

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

Case No. : WP(C)/3220/2026

SHRI BABUL ALI
S/O- LATE KASHIM ALI,
R/O- HOUSE No.- 21, R.D. ROAD, ULUBARI, GUWAHATI, DISTRICT-KAMRUP (METROPOLITAN), ASSAM, PIN - 781007.

VERSUS

GUWAHATI MUNICIPAL CORPORATION AND 5 ORS
REPRESENTED BY ITS COMMISSIONER, BETKUCHI, GUWAHATI-781035

2:THE COMMISSIONER
GUWAHATI MUNICIPAL CORPORATION
BETKUCHI
GUWAHATI -781035

3:THE ASSOCIATE PLANNER
GUWAHATI MUNICIPAL CORPORATION
PLANNING BRANCH
GUWAHATI -781001

4:MAYOR IN COUNCIL (APPEAL)
REPRESENTED BY ITS CHAIRMAN
GUWAHATI MUNICIPAL CORPORATION
BETKUCHI
GUWAHATI -781035

5:SHRI SIRAJUL ISLAM
S/O.- HAZI ARSHAD ALI

R/O- M. AZAD ROAD
NEAR S.K BHUYAN HIGH SCHOOL
AMINPATTY

P.O. AND P.S. NAGOAN
DISTRICT.- NAGAON
ASSAM
PIN - 782001.

6:GUWAHATI METROPOLITAN DEVELOPMENT AUTHORITY (GMDA)

REP. BY ITS CHIEF EXECUTIVE OFFICER
3RD FLOOR
STATEFED BUILDING
GMCH ROAD
BHANGAGARH
GUWAHATI
PIN 78100

Advocate for the Petitioner : MR S R A NASER, MR. P D NAIR,MR. F AHMED,MR G ALAM

Advocate for the Respondent : SC, GMC, FOR CAVEATOR,MS. M BARUAH,MR A KAKOTI

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

JUDGMENT

06.10.2026

Heard Mr. G. Alam, learned counsel for the petitioner and Mr. S. Bora, learned Standing Counsel, GMC & GMDA for the respondent nos. 1, 2, 3, 4 & 6.

2. From the statements and averments made in the writ petition and the documents annexed thereto, it transpires that the respondent no. 5, as a power of attorney holder of one Begum Raunak Akhtar Huda, filed a complaint before the Guwahati Municipal Corporation [GMC] alleging illegal and unauthorized permanent construction without a No Objection Certificate [NOC] or valid building permit on a plot of land measuring 1 Katha 5 Lessas, covered by Dag no. 384 of Patta no. 34, at Revenue Village – Sahar Ulubari Part-I, Mouza – Ulubari, District – Kamrup [M] ['the subject-plot', for short].

3. On receipt of the complaint, a notice was issued on 17.12.2025 to the present

petitioner and four other noticees asking from them documents including NOC, approved plan, up-to-date property tax receipt, etc. within three days time as regards such constructions. In response, the petitioner submitted a Reply before the respondent no. 3 on 19.12.2025 stating inter alia that he was in possession of an old tinned-roof Assam Type House over an area of land measuring 9 Lessas within the subject-plot since the time of his father and he had been paying regularly property taxes to the GMC and land revenue, and had not undertaken construction of any RCC Building.

4. After receipt of the Reply and site inspection, an Order under Section 337[3] of the Guwahati Municipal Corporation [GMC] Act, 1971 came to be passed by the respondent no. 2 on 18.03.2026 ordering for removal or pulling down the set-back deviation noted therein with a further observation that the constructions of RCC and Assam Type House were unauthorized. The Order dated 18.03.2026 was issued in respect of five persons including the petitioner.

5. Aggrieved by the Order dated 18.03.2026, the petitioner filed an appeal before the respondent no. 4. By an Order dated 15.06.2026, the appeal of the petitioner was disposed of granting liberty to the competent authority in the GMC to bring the proceeding initiated by the Order dated 18.03.2026 issued under Section 337[3] of the GMC Act to its logical conclusion by following due process of law. The appellate authority has observed that the petitioner had not produced any valid NOC, technical blueprint, or approved permit from the GMC for construction of permanent structure over the subject-plot.

6. It is the case of the petitioner that the tinned-roof Assam Type House with two rooms was constructed over an area of land measuring 320 sq. ft. and there is also another separate one ekchali tinned-roof Assam Type House measuring 190 sq. ft. within 9 Lessas. The construction of the said houses started in the year 1980 and since then, the family of the petitioner is in occupation of the said houses. In the year 1996, the houses were assessed by the GMC for property tax and after assessment, the family of the petitioner had been paying property taxes regularly till date.

7. Mr. Bora, learned Standing Counsel, GMC & GMDA has submitted that in the entire process leading to the Order dated 18.03.2026, the petitioner was provided an adequate opportunity of being heard and it was after spot verification and hearing the petitioner only, the Order dated 18.03.2026 was passed and thereafter, the Order dated 15.06.2026 was passed.

8. Mr. Alam, learned counsel for the petitioner has submitted that during the pendency of the writ petition, the petitioner has applied for building permission for construction of an RCC [G+2] Building under the Mukhya Mantrir Sohoj Griha Nirman Achoni before the GMDA on 30.07.2026. Along with the application, the petitioner and his brother submitted an affidavit to the effect that in the event building permission is granted for construction in the concerned part within the subject-plot, covered by Dag no. 385 [new] and Patta no. 187 [new] at Village – Sahar Ulubari-I, Mouza – Ulubari, Assam, they would demolish the temporary Assam Type Houses standing on the said plot of land and they would not construct any structure without obtaining any No Objection Certificate [NOC]. The said application filed by the petitioner and his brother was processed by the respondent GMDA. On 06.08.2026, the respondent GMDA has issued a Planning Permit for construction of RCC [G+1] Building for residential purposes under Section 5 of the Assam Unified Building Construction Regulation Bye-laws, 2022, as amended, r/w Section 4 of the Assam Building Construction [Regulation] Act, 2022, as amended, with particulars and parameters indicated therein. Similarly, the respondent GMC has also issued NOC in the said plot of land vide NOC no. GMC/BP/MMSGNA/20260806/0015334 dated 06.08.2026 for construction of an RCC [G+1] Residential Building having Ground Floor area of 33.45 sq. metres and a 1st floor having an area of 38.84 sq. metres. While issuing the Planning Permit and the NOC, it has been observed that those would remain valid up to two years from the date of their issuance.

9. Admittedly, Houses standing on the subject-plot were constructed without any NOC. Consequently, the said constructions are held to be unauthorized in the Order dated 18.03.2026. By the Order dated 18.03.2026, demolition of the Houses as unauthorized construction has been ordered.

10. It has been held by the Hon'ble Supreme Court in the case of **Rajendra Kumar Barjatya and another vs. U.P. Avas Evam Vikas Parishad and others, 2024 INSC 990**, that illegality in unauthorized construction cannot be perpetuated if the construction is made in contravention of the Acts / Rules, it would be construed as illegal and unauthorized construction, which has to be necessarily demolished. It cannot be legitimized or protected solely under the ruse of the passage of time or citing inaction of the authorities or by taking recourse to the excuse that substantial money has been spent on the said construction.

11. In **Kaniz Ahmed vs. Sabuddin and others, 2025 INSC 610**, the Hon'ble Supreme Court has observed that the courts must adopt a strict approach while dealing with cases of illegal construction and should not readily engage themselves in judicial regularization of buildings erected without requisite permissions of the competent authority. The need for maintaining such a firm stance emanates not only from inviable duty cast upon the courts to uphold the rule of law, rather such judicial restraint gains more force in order to facilitate the well-being of all concern. The law ought not to come to rescue of those who flout its rigors as allowing the same might result in flourishing the culture impunity. It has been observed that if the law were to protect the ones who endeavour to disregard it, the same would lead to undermine the deterrent effect of laws, which is the cornerstone of a just and orderly society.

12. In view of the admitted position that the constructions indicated in the Order dated 18.03.2026 passed under Section 337[3] of the GMC Act, 1971 by the respondent no. 2 are unauthorized, this Court does not find any reason to interfere with the Order dated 18.03.2026 passed by the respondent no. 2 and the Order dated 15.062026 passed by the respondent no. 4 in appeal preferred under Section 438, GMC Act by the petitioner as an appellant against the Order dated 18.03.2026. Consequently, the writ petition is found to be devoid of any merit. As a corollary, the demolition of the unauthorized constructions, as directed by the Order dated 18.03.2026, needs to be implemented.

13. At this juncture, it is submitted by Mr. Alam, learned counsel appearing for the petitioner that the family of the petitioner is living in the existing houses which are directed to be demolished as unauthorized constructions by the Order dated 18.03.2026. He has

submitted that a period of three months from today be granted to the petitioner to demolish the said unauthorized constructions standing on the plot of land in question. Having regard to the fact that the petitioner and his family members are presently staying in those houses, it is observed that in the event the process of demolition is not carried out by the petitioner within a period of three months from today, the respondent GMC authorities shall proceed to demolish the unauthorized constructions after expiry of a period of three months and the cost of expenditure will be realized from the petitioner as an arrear of municipal taxes.

14. With the observation made and the direction given above, the writ petition is disposed of.

JUDGE

Comparing Assistant