



GAHC010012942013

Page No.# 1/17



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

Case No. : WP(C)/6736/2013

SUFAL KUMAR DUTT and ANR
S/O LT. APURBA KUMAR DUTTA R/O HOUSE NO. 20, KRISHNANAGAR
LANE, CHATTRIBARI, GUWAHATI- 781001, DIST. KAMRUP METRO, ASSAM.

2: SRI MANASH DAW
S/O LT. ARUN KUMAR DAW R/O KRISHNA NAGAR
G.K. DAS LANE
CHATTRIBARI
GUWAHATI- 781001
DIST. KAMRUP
METRO
ASSAM

VERSUS

GUWAHATI METROPOLITAN DEVELOPMENT AUTHORITY and 2 ORS
ABODY CORPORATE CONSTITUTED UNDER SECTION 4 OF THE
GUWAHATI METROPOLITAN DEVELOPMENT AUTHORITY, AT. 1985
HAVING ITS OFFICE AT STATEFED BUILDING, 3RD FLOOR, GMCH ROAD,
BHANGAGAR, GUWAHATI- 781005, ASSAM.

2:CHIEF EXECUTIVE OFFICER

GUWAHATI METROPOLITAN DEVELOPMENT AUTHORITY STATEFED
BUILDING
3RD FLOOR
GMCH ROAD
BHANGAGARH
GUWAHATI- 781005
ASSAM

3:THE COMMISSIONER

GUWAHATI MUNICIPAL CORPORATION



PANBAZAR
GUWAHATI-781001
ASSAM

For the Petitioner(s) : Mr. M. K. Choudhury, Advocate
: Mr. P. Bharadwaj, Advocate

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

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

Date : 21-09-2023

1. The instant writ petition has been filed challenging the order dated 15.11.2013 issued by the Chief Executive Officer, Guwahati Metropolitan Development Authority whereby the Petitioners herein were directed to demolish the unauthorized portion of the building and stop the unauthorized use of the same within 5 days from the receipt of the order failing which the GMDA would be free to proceed with demolition of the unauthorized portion of the building or sealing of the premises of the unauthorized construction and use of the building on its own without giving any further intimation; and expenses thereof shall be recovered from the Petitioners.

2. The facts involved in the instant case as could be seen from a perusal of the pleadings available on record are that one Shri Nirmal Kr. Sen vide a registered Deed of Sale bearing Deed No.2459/1989 transferred a plot of land measuring 15 Lechas covered by Dag No.1758(old), Medi Kheraj Patta No.842(new), Dag No.914 (new) included in Patta No.1540 situated at Krishna Nagar, Girija Das Colony, Paltan Bazar, Guwahati under Mouza Sahar Guwahati,



Block No.II along with a RCC building standing thereon assessed as Holding No.64 of Ward No.18 of the Guwahati Municipal Corporation.

3. The record further reveals that the Holding No.64 pertaining to a RCC two storied building and the first floor was assessed as Holding No.127 and the year of construction was 1978 and 1981. This aspect of the matter is apparent from Annexure-A of the Affidavit-in-Opposition filed by the Town Planner Guwahati, GMDA.

4. It further reveals from the records that pursuant to the Deed of Sale dated 07.07.1989, the land was mutated in the name of Apurba Kumar Dutta (since deceased) and Arun Kumar Daw (since deceased). The Holding No.64 of Ward No.18 was also mutated in the names of Late Apurba Kumar Dutta and Late Arun Kumar Daw by bifurcating the said Holding No.64 into holding No.64A and 64B respectively. It further reveals from the records which pertains to the Assessment Registers for the third quarter of 2007-08 and third quarter of 2010-11, in respect to holding No.64B, the description of the building has been shown as RCC three storied building with the year of construction as 1997. The records also shows that on 15.02.2006, Late Apurba Kumar Dutta expired and on 1st of May, 2009, Late Arun Kumar Daw expired.

5. From a perusal of the writ petitions, there is no mention as regards the Petitioners' knowledge as to when new constructions were carried out pursuant to the Deed of Sale executed on 07.07.1989. In the writ petition, what has been stated is that there was a construction carried out in the year 1997 on the basis of extracts of the Assessment Registers of the third quarter of 2007-08 and third quarter of 2010-11 which were obtained after the death of Late Apurba Kumar Dutta and Late Arun Kumar Daw.



6. The records further reveals that on 06.10.2012, a notice was issued by the Commissioner, Guwahati Municipal Corporation to the Petitioners herein stating inter alia that the Petitioners had undertaken/carried out development/erection or re-erection of RCC (Ground floor, Mezzanine floor, 1st floor and 2nd floor) building without the permission which is required to be obtained under the provisions of the Guwahati Municipal Corporation Act, 1971 (for short, "the Act of 1971") and the building byelaws framed under provisions of Section 416(i) of the said Act of 1971 as specified in the Schedule-A to the said notice. The Petitioners were directed to discontinue the undertaken works of erection forthwith and to show cause within 7 days as to why unauthorized construction/deviations should not be demolished.

7. Pursuant thereto, the Petitioners submitted a detailed reply on 15.10.2012. In the said reply, at paragraph No.3, it was mentioned that during the lifetime of Late Apurba Kumar Dutt and Late Arun Kumar Daw, they had constructed a three storied building over the said plot of land and the said building was completed in the year 1997. It was denied that the construction of the building was without permission. Further to that, on the basis of the assessment of the holdings done by the GMC Authorities, it was stated that the construction of the building cannot be said to be illegal in view of the judgment of this Court in the case of ***Jadav Chandra Das Vs. Guwahati Municipal Corporation and Others reported in 1995 (III) GLT 588***. The writ petition is however silent as to what steps the Guwahati Municipal Corporation had taken pursuant to the said reply received from the Petitioners.

8. Be that as it may, the Chief Executive Officer of the Guwahati Metropolitan Development Authority (for short "GMDA") had issued a notice under Section 87 of the Guwahati Metropolitan Development Authority Act, 1985 (for short "the



Act of 1985") stating inter alia that the construction which was carried out by the Petitioners were in deviation of the sanctioned plan issued Permit No.GMDA/BP/1218/2000/25 dated 14.11.2000 of the GMDA and thereby contravened the provisions of Sections 24 and 25 of the Act of 1985. The Petitioners were therefore asked to show cause within 10 days of receipt of the said show cause notice, why the approved/unauthorized building should not be demolished under Section 88(1) or seal the unauthorized erection or work of the premises in which such work was carried out or completed under Section 88(4) of the Act of 1985. In the said notice, the illegalities for which the notice was issued was mentioned. It was categorically stated that the Mezzanine floor and the 2nd floor were constructed without permission; the rear set back was maintained 1 meter as against 2.7 meters as approved earlier and 1.2 meters cantilever projection over the side margin.

9. The Petitioners thereupon submitted a reply which was received by the Guwahati Metropolitan Development Authority on 26.12.2012. In the said reply, it was mentioned that during the lifetime, Late Apurba Kumar Dutta and Late Arun Kumar Daw, they had constructed a three storied building over their land measuring 15 Lechas covered by Dag No. 914 (new) 1758 (old) included in K.P. Patta No.1540(old)/842 (new) at Sahar Guwahati 2nd part under Guwahati Mouza. The building was completed in the year 1997 as could be seen from the notice under Section 156(3) for the assessments of the building in the year 1997. It was further mentioned that the construction part is exclusively within the domain of the GMC and not the GMDA. Further to that, it was specifically mentioned that the building was constructed in the year 1997 and the same had been assessed by the Guwahati Municipal Corporation in the same year. The predecessor in interest of the Petitioners as well as the Petitioners thereupon



have been paying regular taxes in respect to the G+2 building and the fact was verified by the GMC holding assessment sheet with respect to Holding Nos.308, 64B which also shows the year of construction as 1997. It was specifically mentioned that the contention in the notice dated 17.12.2012 that the building was constructed in terms with the Permit No.GMDA /BP/1218/2000/25 dated 14.11.2000 was beyond the records and the same is not maintainable in law. It is further seen from the reply that the Petitioners stated that the building is a commercial construction and all the buildings in the periphery of the building constructed in the area is having similar construction. It was specifically stated that pointing out only the Petitioners' building and leaving others by giving reference of a wrong NOC would be against the spirit of the equality before law. Under such circumstances, the Petitioners therefore requested the Chief Executive Officer, the Guwahati Metropolitan Development Authority to drop the said proceedings.

10. Pursuant to the said reply, the Chief Executive Officer, GMDA issued a communication on 04.03.2013 to both the Petitioners asking the Petitioners to furnish the copy of the No Objection Certificate obtained by their parents for construction of the existing building which is claimed to have been constructed in the year 1997. In the said letter, it was also mentioned that a letter No.GPL/UC/28/143/2012/13/1202 dated 29.10.2012 which was received from the Commissioner, Guwahati Municipal Corporation was enclosed therewith wherein it was mentioned that the copy of the NOC No.GMDA/BP/1218/2000/25 dated 14.11.2000 issued from the Office of the GMDA was furnished before the Officials of the Guwahati Municipal Corporation by the Petitioners. It is however relevant to mention that although the letter issued by the Commissioner, Guwahati Municipal Corporation dated 29.10.2012 was a part of the



communication dated 04.03.2013 issued by the Chief Executive Officer of the GMDA but the same was not brought on record by the Petitioners.

11. Pursuant to the said communication dated 04.03.2013, the Petitioners submitted a reply to the Chief Executive Officer, GMDA. In the said reply, it was stated that as the time was very limited and the Chief Executive Officer of the GMDA had sought old records, the Petitioners tried their best to locate the NOC based upon which their building was constructed and completed in the year 1997. It was mentioned that the Petitioners had inherited the property from their fathers namely Late Apurba Kumar Dutta and Late Arun Kumar Daw and the Petitioners were not in a position to trace out the NOC based upon which their building had been constructed. The Petitioners further sought for some time so that they may request the Guwahati Municipal Corporation to furnish a copy of the documents based upon which their building was assessed in the year 1997 by the Guwahati Municipal Corporation. The Petitioners denied that they had furnished the NOC No.GMDA/BP/1218/2000/25 dated 14.11.2000 and to the best of their knowledge as the building was in existence on 14.11.2000, there was no need of taking fresh NOC for construction of the same from the GMDA.

12. Pursuant thereto, the impugned order was passed on 15.11.2013 whereby the Petitioners were directed to demolish the unauthorized portion of the building and stop the unauthorized use of the same as it was in violation of the Act of 1985, building byelaws and the zoning regulations within 5 days from the receipt of the order failing which the GMDA would be free to proceed with the demolition of the unauthorized portion of the building or sealing of the premises of the unauthorized construction and use of the building on its own without giving any further intimation and expenses thereof shall be recovered from the

Petitioners. It is under such circumstances that the instant writ petition was filed challenging the impugned order dated 15.11.2013 on 19.11.2013.

13. The records further show that vide an order dated 20.11.2013, this Court had issued notice. The said impugned order was stayed till the returnable date. Thereupon vide another order dated 25.04.2014, the interim order passed earlier was directed to continue until further orders.

14. An affidavit-in-opposition was filed by the Respondent Nos. 1 and 2. In the said affidavit-in-opposition, it was mentioned that various material facts were concealed by the Petitioners inasmuch as an enquiry was conducted by the Guwahati Municipal Corporation. The said enquiry report was enclosed as Annexure-A. A perusal of the said enquiry report reveals that during the course of enquiry, it was found that deviations were found. The ground floor was used as godown and the mezzanine floor was used as umbrella manufacturing unit. It was mentioned that the initial assessment of the Holding No.64(B) of Late A. K. Dutta and Late A. K. Daw was collected from the Office of the Deputy Commissioner (Central Zone) of the Guwahati Municipal Corporation and on examination of the Assessment Sheet, it was found that during 1997, the following structures existed :-

- (i) RCC ground floor of 49.16 Sq. meters with semi RCC 1st floor with 23.22 sq. meters.
- (ii) A.T. House of 84.40 sq. meters.

The report further stated that in another assessment sheet for the same holding for the year 2007-08, the following structures were mentioned :-

RCC ground floor of 45.6 sq. meters

Mezzanine floor of 70.38 sq. meters



First floor of 44.19 sq. meters + 83.72 sq. meters(R).

15. It was further mentioned in the affidavit-in-opposition that assessment of any building by the Guwahati Municipal Corporation is for the purpose of levy of tax and it does not confer legality to an unauthorized building and the authority can legally proceed to take action against such unauthorized building under the Act of 1985 and the building byelaws. At paragraph No.7 of the said affidavit-in-opposition, it was mentioned that Late Apurba Kumar Dutta and Late Arun Kumar Daw applied for permission to the GMDA in the year 2000 and they were granted permission to construct the ground and the first floor but the permission for the second floor was not specifically granted. The permission for the building was for residential use. In the approved site plan, it was clearly stated that the old dilapidated RCC structure would be demolished. It was further mentioned that on 29.10.2012, the Commissioner, GMC had written a communication to the Chief Executive Officer, GMDA stating about various details relating to a complaint filed by one Mr. A. Chakravorty as well as informing the Chief Executive Officer of the GMDA that in view of the approval of the Government vide letter dated 18.07.2008 at Serial No.6 as regard to subsequent notice on the building to be initiated by the authority granting permission and as such the Chief Executive Officer of GMDA was requested to take appropriate steps. It was further categorically mentioned that during the course of enquiry on 03.09.2012, a copy of the NOC was collected from the Petitioner No.2 and it was on that basis the GMC did not take any action but placed the matter before the GMDA as the GMDA had issued the NOC.

16. An affidavit-in-reply was filed by the Petitioners to the affidavit-in-opposition filed by the Respondents. In the said affidavit-in-reply, there is no



denial to the NOC dated 14.11.2000 issued to the predecessor in interest of the Petitioners. However, it was mentioned that the Petitioners had no knowledge about such application being filed or the NOC issued on 14.11.2000 to their predecessors in interest.

17. This Court have perused the materials on record and also heard the learned counsels for the parties. From the perusal of the records, it transpires that the predecessors in interest of the Petitioners i.e. Late Apurba Kumar Dutt and Late Arun Kumar Daw purchased a plot of land measuring 15 Lechas along with a RCC building which was assessed as Holding No.64 of Ward No.XVIII by the Guwahati Municipal Corporation. Pursuant to the transfer, vide the Registered Deed of Sale dated 07.07.1989, the predecessor in interest of the Petitioners have mutated their names in the land records as well as the GMC Holding No.64 and the said Holding No.64 was bifurcated as Holding Nos. 64A and 64B. A perusal of the pleadings of the Petitioners do not reflect that the Petitioners had averred when the three storied RCC building was constructed though they stated that it is apparent from the Assessment Registers which were prepared in the third quarter of 2007-08 and the third quarter of 2010-11 that there is an RCC construction of the year 1997. However from the replies so submitted by the Petitioners before the Commissioner as well as to the Chief Executive Officer, GMDA, there are admissions to the effect that the predecessor in interest of the Petitioners i.e. Late Apurba Kumar Dutta and Late Arun Kumar Daw had constructed the three storied building and completed the said construction in the year 1997. It is also seen from the materials on record that the Petitioners had taken a plea that due to paucity of time, they could not approach the Authorities concerned about the permission for construction prior to 1997 but even after the passage of 10 years during which period the instant



proceedings are pending, nothing has been placed before this Court as regards any permission. From the affidavit-in-opposition along with the documents enclosed, it is clear that an application was filed by Late Apurba Kumar Dutta and Late Arun Kumar Daw seeking permission for construction of a ground + 1st floor and the said permission was accorded on 14.11.2000. The said NOC as well as approved plan are part of the affidavit. It clearly transpires that although the application was filed for ground + two storied building but the approval was only given for ground + 1. It is also seen from the No Objection Certificate dated 14.11.2000 that the permission was granted for erection of a building of ground 104.36 sq. meters and first 104.36 sq. meters for residential purpose in accordance with the plan submitted by it. The sanction for construction was made with certain modifications shown by red ink in the drawings and the rear set back was directed to be 9 ft. instead of 8 ft. and the 2nd floor was not allowed due to FAR restrictions.

18. This Court finds it relevant to take note of submission of Mr. M. K. Choudhury, the learned Senior counsel for the Petitioner wherein he disputed the NOC dated 14.11.2000 as well as the approved plan. But from a perusal of the affidavit-in-reply filed by the Petitioners, it does not show that the Petitioners have disputed that the predecessor in interest had applied for the said permission and was granted the NOC dated 14.11.2000. Rather it is the stand of the Petitioners in the affidavit-in-reply that they had no knowledge about the same. This Court had also taken note of the Enquiry Report enclosed as Annexure-A to the affidavit-in-opposition, the details of which have been already mentioned supra.

19. In the backdrop of the above facts, let this Court take note of the relevant

provisions of the Act of 1985. Section 25 of the Act of 1985 stipulates that any person intending to carry out any development on any land shall make an application in writing to the GMDA for the permission in such form and containing such particulars and accompanied by such documents as may be prescribed. The manner in which the said application has to be filed has also been mentioned in Section 25 of the Act of 1985. Now, coming to Section 24 of the Act of 1985, it stipulates that there is prohibition after the coming into force of the Act of 1985 i.e. w.e.f. 01.04.1992 of carrying out any development, institution or change of use of any land within the Guwahati Metropolitan Area without obtaining the permission in writing from the authority. This Court further finds it relevant to take note of Section 87 and 88 of the Act of 1985 which confers the power to stop development as well as to demolish a building which inter alia have been constructed in contravention of master plan or development scheme or without permission, approval or sanction referred to in Section 25 and 30 of the Act or in contravention of any conditions subject to which permission, approval or sanction has been granted. Sub-Section (4) of Section 88 further confers the authority upon the Chief Executive Officer, GMDA the power to seal unauthorized construction.

20. Therefore, from an analysis of the above provisions, it is clear that the Chief Executive Officer, GMDA was competent and authorized in terms with the provisions of the Act of 1895 to pass the impugned order dated 15.11.2013. It is also apparent from the NOC dated 14.11.2000 and the Approved Plan read along with the Enquiry Report enclosed as Annexure-A that the building of the Petitioners contravenes the conditions of the NOC and the Approved Plan.

21. Mr. M. K. Choudhury, the learned Senior counsel for the Petitioners submits that from the materials on record it would clearly show that there was a RCC



building which was conveyed to the predecessor in interest of the Petitioners vide the registered Deed of Sale dated 07.07.1989 along with the Holding No.64. The assessment sheet of Holding No.64 stood in the name of the vendor of the predecessor in interest of the Petitioners i.e. Shri Nirmal Kumar Sen would show that the constructions were made in the year 1978, 1980 and 1981. It was further submitted that the assessment sheets for the third quarter of 2007-08 and 2011-12 would also show that the constructions were carried out by the predecessor in interest of the Petitioners and completed in the year 1997. All these constructions which were carried out and the assessment so made also clearly shows that the assessments of the buildings as commercial. The learned Senior counsel further submitted that if the area in question wherein the building stands is used for commercial purposes and the building in question was all along assessed for commercial purposes, the permission for construction even admitting was issued on 14.11.2000 for residential purposes would not change the character of the building from being commercial. The learned Senior counsel therefore submitted that as the building is assessed as commercial and the use of the building is commercial then the FAR which is permissible would be different from a building which is residential. It was therefore the submission of the learned Senior counsel that this is not a case for compounding but a case where the petitioner should be permitted to submit an application along with a revised plan so that the construction as it stands be treated as commercial and the applicable FAR is permitted.

22. This Court had given due consideration to the said submissions taking into account that the building in question have all along been assessed by the GMC as a commercial building. This Court cannot also be unmindful of the fact that if the use of the building is changed to which have been assessed by the GMC all



along as commercial, then the permissible FAR (Floor Area Ratio) to which the Petitioners would be entitled to would be higher than in respect to building wherein the NOC was issued for residential purposes.

23. This Court also finds it relevant to note that it is not apparent from the facts placed before this Court as to whether the same building as it stood prior to the NOC dated 14.11.2000 stands or the said building was demolished and a new building was constructed after the NOC dated 14.11.2000 inasmuch as if the existing building was not demolished, it would mean that the NOC dated 14.11.2000 was not put to use. These are questions of facts which can only be decided by a fact finding authority and such questions cannot be decided in the present proceedings.

24. This Court further finds it relevant to observe that mere assessment being carried out by the GMC Authorities for levying GMC Taxes would not legalize any illegal construction. This is well settled as had been held by the Division Bench of this Court in the case of ***Sujata Pathak Vs. State of Assam and Others reported in (2007) 2 GLR 371.*** Para 7 of the said judgment is quoted hereinbelow:

“7. The other contention of the petitioner is that since the corporation has assessed the said third floor of the building to tax and realized such tax from the petitioner, the Corporation cannot demolish the third floor, but has to regularize such unauthorized construction. The said contention cannot be accepted for the reason that for construction of a building, the no objection certificate has to be obtained from the competent authority, in this case from the Corporation and the structural plan has to be approved. In the absence of such permission and approved plan no construction can be made. Building bye laws of the corporation do not authorize the Corporation to regularize any unauthorized construction. More over assessment of a building to tax cannot legalize an unauthorized



construction. Such assessment of tax cannot operate as estoppel against the Corporation from proceeding against the petitioner for demolition of any unauthorized construction as there cannot be any estoppel against the law."

25. Accordingly, the instant writ petition stands disposed of with the following observations and directions.

(i) The impugned order dated 15.11.2013 in the opinion of this Court calls for no interference as in the facts available before this Court, the RCC building of the Petitioners is in contravention to the permission i.e. NOC dated 14.11.2000 and the Approved Plan. The said observations are subject to the following directions as hereinunder.

(ii) The Petitioners herein are permitted to submit an application before the Chief Executive Officer, GMDA bringing to the notice of the authority concerned that the building in question which was constructed and in existence, had all along been assessed as a commercial building and as such, the permission which ought to have been granted to the Petitioners in respect to the said building, ought to have been a permission for commercial use, taking into account that the buildings in the vicinity have been permitted for commercial use. Upon such application filed, the Chief Executive Officer, GMDA shall take into account the various assessments carried out in respect to the building which have been in existence since 1978-1981 and in the year 1997 for commercial use and consider passing appropriate orders thereby revising the permission which was granted on 14.11.2000 for construction of the building from residential use to commercial use. If such use is changed, the GMDA shall thereupon take appropriate steps for revising the permission on the basis of the available FAR in view of the building being converted for commercial use. The



said exercise be carried out by the GMDA on the basis of the extant building byelaws of the GMDA and taking into consideration its permissibility as per the Act of 1985 and building byelaws. It is also relevant herein to mention that during the course of hearing, it was pointed out that Gauhati Building Construction (Regulation) Act, 2010 also needs to be looked into while considering the said application to be filled by the Petitioner. In that view of the matter, this Court also finds it pertinent to observe that the said application be considered by taking into consideration the extant laws which would include the Gauhati Building Construction (Regulation) Act, 2010 and the Byelaws framed thereunder taking into consideration that the said Act of 2010 have made necessary amendments to the Act of 1985 and the Act of 1971 to regulate the construction of the Buildings under the jurisdiction of Guwahati Metropolitan Area.

(iii) This Court further provides the Petitioners liberty to prove before the Chief Executive Officer, GMDA that the existing building as it stood prior to the NOC dated 14.11.2000 was not demolished and no new constructions were carried out pursuant to the NOC dated 14.11.2000. In other words, the Petitioners are given the liberty to show that the NOC dated 14.11.2000 was never acted upon. It is observed that if the Petitioners succeed, the Chief Executive Officer, GMDA shall thereupon proceed in the manner permissible under law.

(iv) The Petitioners are given 60 days time from today to exercise the liberty so given hereinabove. It is directed that if the Petitioners exercise the liberty within the stipulated time, no action be taken on the basis of the impugned order dated 15.11.2013 till the decision is taken by the Chief Executive Officer, GMDA. It is clarified that if the Petitioners fail to exercise the liberty within the time so granted or fails to succeed, the Respondent GMDA would be at liberty to take



such consequential steps as per the order dated 15.11.2013.

(v) The Chief Executive Officer, GMDA shall afford an opportunity to the Petitioners of hearing before taking any adversarial steps against the Petitioners pursuant to exercising the liberty within the stipulated time.

JUDGE

Comparing Assistant