



GAHC010184922022

Page No.# 1/23



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

WP(C)/3749/2018

S.S. ROAD HAWKERS ASSOCIATION
(GOENKA TO M G ROAD)FANCY BAZAR
GUWAHATI- 01
REP.. BY ITS SECRETARY
SRI RATI DAS
S/O- SRI RUKSHMINI DAS

VERSUS

THE STATE OF ASSAM AND 10 ORS.
REP. BY THE CHIEF SECRETARY TO THE GOVT OF ASSAM
DISPUR
GUWAHATI- 6

2:THE STATE OF ASSAM
REP. BY THE SECRETARY TO THE GOVT OF ASSAM
GUWAHATI DEVELOPMENT DEPTT
DISPUR

GUWAHATI- 6

3:THE DEPUTY COMMISSIONER
KAMRUP(M)
GUWAHATI- 01

4:THE COMMISSIONER OF POLICE
GUWAHATI CITY
GUWAHATI- 01

5:THE GUWAHATI MUNICIPAL CORPORATION
REP. BY THE COMMISSIONER
GUWAHATI- 01

6:THE MAYOR
GUWAHATI MUNICIPAL CORPORATION
GUWAHATI- 01

7:THE GUWAHATI METROPOLITAN DEVELOPMENT AUTHORITY



REP. BY THE CHIEF EXECUTIVE OFFICER
BHANGAGARH
GUWAHATI- 05
8:FANCY BAZAR MUNICIPAL MARKET DEALERS ASSOCIATION
FANCY BAZAR
GUWAHATI- 01
REP. BY ITS SECRETARY ARUP KR. CHOUDHURY
9:ARUP KR. CHOUDHURY
S/O- LATE DEBO PRASAD CHOUDHURY
R/O- J BORA LANE
JOOR PUKHURI PAR
UZAN BAZAR
P.O- UZAN BAZAR
GUWAHATI- 01
DIST- KAMRUP(M)
ASSAM
10:NARAYAN DAS
S/O- LATE NABA DAS
MOTHURA NAGAR
SHANTIPUR HILL SIDE
P.O AND P.S- BHARALUMUKH
GHY- 09
11:THE UNION OF INDIA
REP. BY THE MIN OF HOUSING AND POVERTY ALLEVIATION
NIRMAN BHAWAN
NEW DELHI

Linked Case : WP(C)/1458/2018

S. S. ROAD HAWKERS ASSOCIATION
(GOENKA TO M.G. ROAD)
FANCY BAZAR
GUWAHATI -1
REP.BY THE SECRETARY
SRI RATI DAS
AGE 30 YEARS
S/O SRI RUKSHMINI DAS

VERSUS

THE STATE OF ASSAM AND 7 ORS.
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM

DISPUR
GUWAHATI-6.



2:THE STATE OF ASSAM

REP. BY THE SECRETARY TO THE GOVT. OF ASSAM
GUWAHATI DEVELOPMENT
DISPUR
GUWAHATI-6.

3:THE DEPUTY COMMISSIONER

KAMRUP (METRO)
GUWAHATI-1.

4:THE COMMISSIONER OF POLICE

GUWAHATI CITY
GUWAHATI-1.

5:THE GUWAHATI MUNICIPAL CORPORATION

REP.BY THE COMMISSIONER
GUWAHATI-1.

6:THE MAYOR
GUWAHATI MUNICIPAL CORPORATION
GUWAHATI-1.

7:THE GUWAHATI METROPOLITAN DEVELOPMENT AUTHORITY

REP.BY THE CHIEF EXECUTIVE OFFICER
BHANGAGARH
GUWAHATI -5.

8:THE UNION OF INDIA

REP. BY THE MINISTRY OF HOUSING AND POVERTY ALLEVIATION
NIRMAN BHAWAN
NEW DELHI.

9:FANCY BAZAR MUNICIPAL MARKET DEALERS ASSOCIATION

FANCY BAZAR
GUWAHATI-1

REP. BY ITS SECRETARY SRI ARUP KR. CHOUDHURY.

10:SRI ARUP KR. CHOUDHURY

S/O LT. DEBO PRASAD CHOUDHURY

R/O J BORA

JOOR PUKHURI PAR

UZAN BAZAR

P.O- UZAN BAZAR

GUWAHATI-1

DIST- KAMRUP(M)

ASSAM.

11:SRI NARAYAN DAS

S/O LATE NABA DAS



MOTHURA NAGAR
SHANTIPUR HILL SIDE
P.O/ P.S.- BHARLUMUKH
GUWAHATI- 9
DIST- KAMRUP (M)
ASSAM.

Linked Case : WP(C)/1833/2018

FANCY BAZAR MUNICIPAL MARKET DEALERS ASSOCIATION AND 2 ORS
REP. BY ITS SECRETARY SRI ARUP KR. CHOUDHURY

2: ARUP KR. CHOUDHURY
S/O LT. DEBO PRASAD CHOUDHURY
R/O J.BORA LANE
JOOR PUKHURI PAR
UZAN BAZAR
PO UZAN BAZAR
GUWAHATI-1
DIST. KAMRUP (M)
ASSAM

3: NARAYAN DAS
S/O LATE NABA DAS
MOTHURA NAGAR
SAHANTIPUR HILL SIDE
PO AND PS BHARALUMUKH
GUWAHATI-9
DIST. KAMRUP (M)
ASSAM

VERSUS

GUWAHATI MUNICIPAL CORPORATION AND 2 ORS.
REP. BY ITS COMMISSIONER AND SECRETARY AT PANBAZAR
GUWAHATI-1

2:THE MAYOR
GAUHATI MUNICIPAL CORPORATION
UZAN BAZAR
GUWAHATI-1
3:THE COMMISSIONER
GAUHATI MUNICIPAL CORPORATION
PANBAZAR
GUWAHATI



Advocate for the Petitioner : Mr. M.J. Baruah, Advocate for writ
Petitioners in W.P.(C) No.1833/2018.
Mr. A. Sarma, Advocate for the
Petitioners in W.P.(C) No.3749/2018
and W.P.(C) No.1458/2018.
Advocate for the Respondents : Mr. S. Bora, SC, GMC.

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 23.08.2023, 19.09.2023

& 21.09.2023

Date of Judgment : 21.09.2023

JUDGMENT AND ORDER (ORAL)

The three writ petitions being interlinked are taken up for disposal by this common judgment and order.

2. To understand the dispute involved in the instant proceedings, this Court finds it relevant to take note of the brief facts which led to the filing of the three writ petitions.

WP(C) No.1458/2018

3. This writ petition has been filed by an Association registered under the provisions of the Societies Registration Act, 1860. The said Association consists of members primarily dealing in readymade clothes and portable domestic accessories of various kinds. It is claimed in the writ petition that the said Association comprises of more than 200 hawkers and vendors. However, the list of the members is not a part of the writ petition. The members of the said

Association admittedly were carrying on their trade of hawkers in the stretch of S.S. Road from the point of Goenka Readymade to the LIC building. The Petitioner in the instant writ petition sought for a writ in the nature of Certiorari for setting aside and quashing any move by the Respondent Authorities to relocate the members of the Petitioner Association to the mezzanine floor of the multistoried market of GMC and further sought for a direction from the Government of Assam to implement "The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014" (in short 'the Act of 2014') and directing the Respondents to allow the members of the Petitioner's Association to ply their trade in their area from Goenka to M.G. Road Fancy Bazar until the allotment of the vending zone in terms with the said Act of 2014.

4. It reveals from a perusal of the enclosures to the writ petition that there has been various orders passed by the Division Bench of this Court in Public Interest Litigations as well as the Writ Petitions filed by the Petitioner Association, wherein it was duly taken note of that the people were suffering as the members of the Petitioner Association were occupying a major portion of the road. The Division Bench further observes that the said Act of 2014 having been notified and the survey having been done, there was no reason as to why the vending zone should not be notified and the vendors be not provided with suitable place to run their trades. Accordingly, vide the order dated 05.08.2016 passed in the PIL No. 86/2013, PIL No. 112/2015 and the Writ Petition filed by the Petitioners i.e. W.P.(C) No. 1693/2014, the Competent Authorities were directed to pass necessary orders within 3 months therefrom specifying the vending zones by implementing the Act of 2014 in the true spirit. It was further directed that till such Notification is published, the members of the Petitioner Association shall not be evicted without following due procedures of law. The

State Government was also directed by the same order to take appropriate steps for maintaining safety of the public at large, commuters of the road in question as well as its vicinity and the residents of that locality.

5. It further appears that pursuant to the said order dated 05.08.2016, another Writ Petition was filed by the Petitioner Association apprehending that the members of the Petitioner Association would be shifted from their present location of S.S. Road to the Jail Road in terms with a decision taken by the Guwahati Municipal Corporation on 21.01.2017. It was a case of the members of the Petitioner Association that the location identified by the Respondents at the Jail Road was not at all suitable for carrying out their vending business. The said writ petition was however disposed of by this Court vide an order dated 07.04.2017 observing that the apprehension expressed by the Petitioner Association regarding construction of ecological park was baseless in absence of any evidence showing that steps for construction have been initiated. Further to that, it was also observed by this Court that in view of the order passed on 05.08.2016 in PIL No. 86/2013 alongwith other matters, the members of the Petitioner Association must shift to a new location.

6. Under such circumstances, the said writ petition was closed by this Court granting liberty to the Petitioner to approach this Court as and when a fresh cause of action arises after shifting to a new location. The grievances of the Petitioner to file the instant writ petition i.e. W.P.(C) No. 1458/2018 is that the members of the Petitioner Association would be relocated to the mezzanine floor of the multistoried market of the GMC situated at Fancy Bazar and the area in the mezzanine floor was 3,500 to 4,000 square feet which would not be sufficient to accommodate the members of the Petitioner Association who are more than 200 members. It is under such circumstances, the instant writ

petition i.e. W.P.(C) No. 1458/2018 was filed seeking the reliefs as above mentioned.

7. This Court vide an order dated 21.03.2018 issued notice and in the interim directed that the Respondent Authorities shall not take any coercive steps against the members of the Petitioner Association without following the relevant provisions of the Act of 2014.

8. Pursuant to the filing of the writ petition on 11.04.2018, an additional affidavit was filed by the Petitioner to bring on record two orders dated 28.03.2018 and 07.04.2018 issued by the Commissioner, Guwahati Municipal Corporation. In terms with the order dated 28.03.2018, it is seen that the Commissioner of the Guwahati Municipal Corporation informed the President/the Secretary of the Petitioner Association that in terms with the order dated 21.03.2018 in the present writ petition, the mezzanine floor of the multistoried GMC market complex have been made ready for the occupation of the members of the Petitioner Association. It is also seen that vide an order dated 07.04.2018, the Commissioner of the Guwahati Municipal Corporation passed an order whereby the members of the Petitioner Association were directed to shift to the mezzanine floor of the Fancy Bazar GMC market complex and to take occupation of the vending space against each vendors immediately from the date of receipt of the order, failing which the GMC would evict the members of the Association from the S.S. Road without any further notice.

9. It further reveals from the records that another additional affidavit was filed on 2nd of May, 2018 by the Petitioner for bringing on record the records of another Writ Petition i.e. W.P.(C) No. 1833/2018 filed by the Fancy Bazar Municipal Market Dealers Association and 2 Others in connection with the

mezzanine floor of the multistoried GMC market complex and the order passed therein.

WP(C) No.3749/2018

10. This writ petition was also filed by the Petitioner in W.P.(C) No. 1458/2018 whereby there was a challenge to the Notification dated 27.03.2018 declaring the S.S. Road (Goenka to M.G. Road) as no vending zone; the order dated 28.03.2018 directing the members of the Petitioner Association to shift to the mezzanine floor of the GMC market; the order dated 07.04.2018 declaring that the said mezzanine floor as a vending zone to relocate the members of the Petitioner Association to the mezzanine floor of the multistoried market of the GMC. The Petitioner Association have also sought for a similar direction as was sought for in the earlier Writ Petition i.e. directing the Government of Assam to implement the Act of 2014 as well as allowing the members of the Petitioner Association to ply their trade in the area (from Goenka to M.G. Road, Fancy Bazar) until the allotment of the vending zone in terms with the Act of 2014.

11. It reveals from the records, that this Court had issued notice vide an order dated 18.06.2018. It is also seen that both the Writ Petitions i.e. W.P. (C) No. 1458/2018 and W.P.(C) No. 3749/2018 were listed before the Division Bench alongwith PIL No. 17/2016 and the Division Bench vide an order dated 23.02.2021 directed the instant Writ Petition alongwith W.P.(C) No. 1458/2018 to be listed again before this Court.

12. In the instant writ proceedings, an affidavit-in-opposition has been filed by the Respondent No. 5 and 6 i.e. the Guwahati Municipal Corporation. In the said affidavit-in-opposition, it was mentioned that in pursuance to the order dated 05.08.2016 passed in PIL No. 86/2013, PIL No. 112/2015, W.P.(C) No.

1694/2014 and W.P.(C) No. 2801/2015, the Commissioner of the Guwahati Municipal Corporation undertook the exercise of declaring the S.S. Road as a no vending zone and alternatively allotted the vendors of the S.S. Road a vending zone at the mezzanine floor of the Fancy Bazar Municipal Market. In Paragraph No. 18 of the said affidavit-in-opposition, the reasons as to why the S.S. Road from Goenka Ready Made to M.G. Road was declared as a no vending zone have been mentioned. It has been stated that the members of the Petitioner Association were illegally and unauthorisedly occupying both sides of the footpath as well as the Road i.e. S.S. Road (from Goenka point to M.G. Road) causing immense hardship to the pedestrians, vehicular traffic and there was hardly any space for movement of traffic including fire brigades, ambulance etc. It was mentioned that in the event of any natural disaster or emergency, fire, etc the public at large would suffer immensely and there was a likelihood of unnecessary loss of valuable life and property which could only be prevented by keeping the S.S. Road free from encroachment of the vendors. It was also mentioned that numerous public complaints were received in that regard from time to time for shifting of the vendors to other alternative places. Under such circumstances, in the interest of general public at large, it was decided to shift the vendors of the S.S. Road (from Goenka Point near Sikh Temple to M.G. Road). It was also mentioned that in the order dated 05.08.2016 passed by the Division Bench of this Court arising out of the batch of PILs and the Writ Petitions, there were directions to the Respondents therein to complete the exercise of notifying a suitable vending zone to the vendors of the S.S. Road within 3 months from the date of passing of the order which resulted in declaring the S.S. Road as a no vending zone vide Notification dated 27.03.2018 and also declaring the mezzanine floor of the Fancy Bazar Municipal Market as a

vending zone vide order dated 27.03.2018 for the vendors of the S.S. Road.

13. This Court further finds it relevant to take note of a Notification dated 13.08.2014 enclosed to the affidavit filed by the Respondent Nos. 5 & 6. The said Notification was issued under the provisions of Section 22 (1) and (2) of the Act of 2014 for facilitating the implementation of the National Policy on Urban Street Vendors, 2009 and in compliance to the order of the Supreme Court dated 09.09.2013 in Civil Appeal No. 4156 and 4157 of 2002 whereby the Governor of Assam constituted Town Vending Committees in the Guwahati Municipal Corporation area. From a perusal of the said Notification, it reveals that the Town Vending Committees were constituted zone-wise for 6 zones and at city level. The 6 zones were –

1. The Central Zone Town Vending Committee, Guwahati Municipal Committee,
2. West Zone Town Vending Committee, Guwahati Municipal Committee,
3. South Zone Town Vending Committee, Guwahati Municipal Committee,
4. East Zone Town Vending Committee, Guwahati Municipal Committee,
5. Dispur Town Vending Committee, Guwahati Municipal Committee
And
6. Lokhra Town Vending Committee, Guwahati Municipal Committee

And

At the city level, it was the City Town Vending Committee, Guwahati

Municipal Committee

WP(C) No.1833/2018

14. This writ petition was filed by the Association in the name and style of "Fancy Bazar Municipal Market Dealers' Association and 2 Others". The said Association claims to be a registered Association under the provisions of the Societies Registration Act, 1860. The Petitioner No. 2 is the Secretary of the said Association and the Petitioner No. 3 is the member of the said Association.

15. It is the case of the Petitioners in W.P.(C) No. 1833/2018 that there was a fish market in the erstwhile Guwahati Municipality Market. The said market was gutted completely in a devastating fire incident which took place on 22nd of February, 1989 rendering the several businessmen including the members of the Petitioner Association jobless. It was alleged that there were some anomalies in the rehabilitation of the fire victims in the newly constructed Guwahati Municipal Market for which some victims approached this Court by filing Writ Petitions which were registered and numbered as C.R.No.5290/1998 and W.P. (C)No.4586/2000 which were disposed off vide a judgment dated 11.10.2002 directing the Guwahati Municipal Corporation to finalize the list of fire victims who were in business with license/authority from the Corporation immediately before the date of the fire incident. It was directed by this Court that such victims who were in business having valid and subsisting license/authority would be entitled to allotment of rooms/stalls on priority basis and those fire victims who did not have a subsisting license/tenancy as on the date of the fire incident would be rehabilitated after formalizing their license/tenancy in accordance with the provisions of the Guwahati Municipal Corporation Act, 1971 and the byelaws framed thereunder. The Guwahati Municipal Corporation was directed to take

possible efforts to mobilize the funds to complete the construction of the Guwahati Municipal Market and if any additional amount were required, funds be collected from the victims proportionate to their respective share of area in the market complex which shall be subsequently adjusted against the rent/taxes as per the modalities to be formulated by the High Power Committee and the Guwahati Municipal Corporation. It was also directed by this Court vide the said judgment and order dated 11.10.2002 that if the allottees i.e. the fire victims fails to contribute their part of the amount required for completion of the construction within a reasonable period, not less than 6 months, the stall/room proposed to be allotted in his/her favour would be available for allotment/settlement to outsiders by tender process.

16. The case of the Petitioners herein is that the GMC had made allotment of shops and slabs in the newly constructed GMC market. At the ground floor there were 67 numbers of rooms for grocery shops and 84 numbers of platforms for vegetable vendors. At the mezzanine floor, there were 55 numbers of fish stalls. At the 2nd floor, there were 102 numbers of grocery shops and 4 stationery shops as well as 85 numbers of grocery and 4 stationery shops thereby totaling to 393 allotments were made. It was the case of the Petitioners that the mezzanine floor which was allotted for fish traders was not conducive for running the fish market and as such the instant writ petition was filed seeking a writ in the nature of Mandamus directing the Respondents to implement the resolution taken in the meeting of the Mayor-in-Council held on 19.08.2016 to construct toilet in the mezzanine floor by demolishing the toilet at the ground floor and to make space to accommodate the Petitioners and similarly situated fish vendors who were fire victims to carry on their business alongwith vegetables traders after shifting of their business from the mezzanine floor. The

Petitioners have also sought for setting aside the decision to settle outsiders including the Petitioners in W.P.(C) No. 1458/2018 in the mezzanine floor of the Fancy Market without making any accommodation of the fish traders of the Petitioner Association at the ground floor. The instant writ petition was filed on 27.03.2018 and this Court vide an order dated 06.04.2018 issued notice.

17. The Respondent Nos. 1, 2 & 3 i.e. the Guwahati Municipal Corporation had filed an affidavit on 20.09.2018, wherein it was mentioned that the allotment of stalls at the mezzanine floor were made to 50 numbers of fish traders and 2 numbers of egg traders who were the fire victims of the old gutted market. It was mentioned that though they were allotted stalls, they were never found doing business at the mezzanine floor and some of them never paid any monthly rent. Further to that, it was mentioned that a few allottees had paid rent upto 2007 and some others upto 2009. It was further stated that only 7 numbers of traders of the mezzanine floor were found doing business and paying monthly rent continuously since the time of allotment in 2004. Further to that, it was stated that pursuant to the decision of the Division Bench on 05.08.2016 in PIL No. 86/2013 and other connected matters, the Guwahati Municipal Corporation had declared the S.S. Road as a no vending zone and alternatively allotted the vendors of the S.S. Road a vending zone at the mezzanine floor of the Fancy Bazar Municipal Market. It was also mentioned that in the Mayor-in-Council meeting held on 02.11.2017, it was resolved that some food stores and fish stalls etc. would be shifted at the ground floor of the said market complex and as such one of the grievances of the Petitioners Association to shift to the ground floor was fulfilled.

18. An additional affidavit was filed by the Joint Commissioner of the Guwahati Municipal Corporation on 29.07.2022, wherein it was stated that there

was no fish vendors at the ground floor of the Fancy Bazar Market and only 2 egg vendors were carrying on their business at the ground floor of the Fancy Bazar GMC Market. Further to that, it was mentioned that as regards the mezzanine floor of the Fancy Bazar Municipal Market, a tender process was initiated vide Tender dated 26.11.2020 and the same was challenged by the Petitioner in W.P.(C) No. 5737/2020 and by an order dated 21.12.2020 an interim order was passed by this Court to proceed with the tender process but the final order of settlement shall not be made till the returnable date i.e. 22.01.2021 and the interim order was continuing.

19. The records further shows that an affidavit-in-reply was filed on 19th of September, 2023 by the Writ Petitioners against the affidavit-in-opposition filed by the Respondent Nos. 1, 2 & 3. To the said affidavit-in-reply, the allotment letters of 25 members of the Petitioners Association were enclosed as Annexure-8 series. It was further mentioned that recently the GMC authority had declared the mezzanine floor of the Fancy Bazar Municipal Market as a vending zone and in order to accommodate the street hawkers of S.S. Road starting from Goenka Shop to LIC Building at Fancy Bazar S.S. Road had destroyed the slabs of the mezzanine floor constructed for the fish traders, but neither the toilet at the ground floor were removed for accommodating the fish traders nor any hawkers were accommodated in the said mezzanine floor, as a result of which the fish traders are now in a hanging position. It was also mentioned that some of the fish traders had approached the Secretary of the Petitioner Association swearing on affidavit to the effect that they are still continuing with the fish trading till date. To the said affidavit-in-reply, various allotment letters have been enclosed in respect to 25 members of the Petitioner Association. A perusal of the allotment letters shows that the said allotment letters contains various terms

and conditions.

20. This Court heard this matter on 23.08.2023, on which date taking into account the respective contentions of the parties, asked the learned counsels appearing on behalf of the parties to explore as to whether there is any appropriate area wherein the Petitioners can carry on their business taking into account that as per the learned counsels appearing on behalf of the Petitioners in W.P.(C) No. 1458/2018, the area in the mezzanine floor of the Fancy Bazar GMC Market is not sufficient to accommodate all the vendors of the Petitioners Association. This Court accordingly fixed the matter on 19th of September, 2023 for further consideration. However, on 19th of September, 2023, none of the counsels appearing on behalf of the Petitioners could identify or suggest a place where the Petitioners could be relocated. This Court further enquired with Mr. S. Bora, the learned counsel appearing on behalf of the GMC as to what is the size of the mezzanine floor and as to whether the members of the Petitioners Association in W.P.(C) No. 1458/2018 can be accommodated in the mezzanine floor of the Fancy Bazar Municipal Market. This Court further directed the matter to be listed today.

21. Today when the matter had been taken up, Mr. S. Bora, the learned counsel appearing on behalf of the GMC produced an instruction issued by the Superintendent of the Guwahati Municipal Corporation dated 20.09.2023 wherein the following instructions were given to the learned Standing Counsel of the Guwahati Municipal Corporation. The said instructions being relevant for the purpose of the disposal of the instant writ petition is quoted hereinbelow :

“OFFICE OF THE GUWAHATI MUNICIPAL CORPORATION ::: MARKET BRANCH :::
LAKHTOKIA ::: GUWAHATI

To,

The Standing Counsel,
Guwahati Municipal Corporation,
Guwahati High Court

Sub : Submission of details with ref. to W.P.(C) No. 3749/2018 and W.P.(C) No.1458/2018 –SS Road HAWKERS ASSOCIATION & THE STATE OF ASSAM & OTHERS).

Ref. Letter No. SB/GMC/2023/52 dated 20.09.2023.

Sir,

With reference to above, I have the honour to submit the report regarding the shifting of members of SS Road Hawkers Association from S.S. Road to Mezzanine floor of GMC Municipal Market at Fancy Bazar as sought in the letter mentioned in reference.

- (i) Total area of the Mezzanine floor of GMC Municipal Market at Fancy Bazar allotted for S.S. Road Hawkers Association for vending is 6,478 sq. ft.
- (ii) Height of the Mezzanine floor of GMC Municipal Market at Fancy Bazar allotted for S.S. Road Hawkers Association for vending is 10 ft.
- (iii) Yes, the area allotted is adequate to accommodate all the members of SS Road Hawkers Association.

This is of your kind information and necessary action.

Yours faithfully

20/09/2023

i/c Superintendent

Guwahati Municipal Corporation

Guwahati

The said instructions is also kept on record and marked with the letter "X".

22. From a perusal of the instructions reproduced hereinabove, it reveals that the total area of the mezzanine floor of the GMC Municipal Market at the Fancy Bazar allotted to the Petitioner in W.P.(C) No. 1458/2018 is 6,478 square feet. The height of the mezzanine floor of the GMC Municipal Market at the Fancy Bazar allotted to the Petitioner in W.P.(C) No. 1458/2018 is 10 feet and it has also been categorically mentioned that the area allotted is adequate to

accommodate all the members of the Petitioner Association in W.P.(C) No.1458/2018.

23. In the backdrop of the above, let this Court therefore take into consideration the writ petitions on merit.

24. The writ petitions filed by the S.S. Hawkers Association who are the Petitioners in W.P.(C) No. 1458/2018 and W.P.(C) No. 3749/2018, are primarily being aggrieved by the decision so taken by the Guwahati Municipal Corporation as well as the State authorities in declaring the S.S. Road (Goenka to the M.G. Road) as a no vending zone; not to dislocate them from the S.S. Road till appropriate place is identified as a vending zone and they are relocated as well as also for challenging the direction to locate the members of the Petitioners' Association to the mezzanine floor of the Fancy Bazar Market.

25. During the course of the hearing, it was duly informed that the S.S. Road (from Goenka to the M.G. Road) upon being declared as a no vending zone, the members of the Petitioners' Association in W.P.(C) No.1458/2018 have already been evicted and in the said stretch of road no vending is permitted. The reason why S.S. Road has been declared as a no vending zone has been duly mentioned in Paragraph No. 18 of the affidavit-in-opposition in W.P.(C) No. 3749/2018 to which this Court had mentioned supra. The reason so assigned at Paragraph No. 18 not only is in consonance with the directions passed by the Division Bench dated 05.06.2018 in PIL No. 86/2013 and PIL No.112/2015 as well as other proceedings and also in public interest. Under such circumstances, the question of interfering with the decision of the Respondent Authorities to declare the stretch or S.S. Road (from Goenka to M.G. Road) as a no vending zone does not arise.

26. The second challenge by the Petitioner Association in W.P.(C) No.1458/2018 is to the Notification dated 27.03.2018 whereby the mezzanine floor of the multistoried building of the GMC at Fancy Bazar has been declared as a vending zone under the GMC in exercise of the power conferred under the Act of 2014 and the decision taken to shift the bonafide members of the Petitioner Association to the mezzanine floor of the multistoried building of the GMC. The said decision has been challenged on the ground that the area is not conducive for them to carry on their trade and further it shall not accommodate all the members of the Petitioner Association. This Court was informed by the Standing Counsel, GMC on the basis of the instructions dated 20.09.2023, that all the members of the Petitioner Association could be accommodated.

27. It is noteworthy to reiterate that the Petitioners failed to show or identify any other area where they could be accommodated other than the mezzanine floor of the GMC Market. However, this Court cannot be unmindful of the fact that the members of the Petitioner Association have to be allotted reasonable area so that the members of the Petitioner Association can carry on their business in a meaningful manner. This aspect of the matter can be seen from the provisions of the Act of 2014 itself wherein it is a mandate that the street vendors should be allotted such space to pursue their livelihood in a congenial and harassment free atmosphere. It is also equally important to note that there is a dearth of space in and around the Fancy Bazar area, which the counsels for the parties duly admits.

28. From the above analysis, it would therefore be seen that while the members of the Petitioner Association wants to carry on their business in the vicinity of the Fancy Bazar Area, there is an acute space constraint to permit vending in the said Area except allowing them to vend in the mezzanine floor of

GMC Market. The instructions show that the mezzanine floor admeasures 6478 sq. ft. with a height of 10 ft. and as per the GMC Authorities it can accommodate all the bonafide members of the Petitioner Association. Therefore, it is the opinion of this Court that sans any other space available, the question of interfering with the decision to allocate the mezzanine floor of the GMC market as the vending zone cannot be interfered with. The question as to whether it would be conducive for them to carry on trade at the mezzanine floor, in the opinion of this Court, is well answered by the GMC counsel submitting that these street hawkers had no roof over their heads when they were carrying on the vending at S.S. Road. Some vendors had some sort of temporary structures. But these spaces at the mezzanine floor have a permanent roof and the vending can be done with much ease than previously. This Court is of the opinion that such aspects as regards conduciveness of doing business is perspective and cannot be decided by the Court when the authorities have placed the instructions that all the bonafide members of the Petitioner Association can be accommodated. Be that as it may, the subsequent observations and directions which this Court proposes to make on the basis of the Act of 2014 would take care of the interest of the members of the Petitioner Association.

29. The next question arises as to whether all the members of the Petitioner Association can be accommodated. Though the GMC Authorities state that all the members of the Petitioner Association can be accommodated, but this Court finds it relevant to take note of the provisions of the Act of 2014 and the rights of the street vendors to vend.

30. Issuance of a certificate entitling a street vendor to carry on the business of street vending activities as per Section 5 of the Act of 2014 clearly stipulates

various terms and conditions mentioned in the Certificate of Vending. It also appears from a perusal of the provisions of the Act of 2014 that a Certificate of Vending is not perpetual and in terms with Section 9 of the Act of 2014 shall be valid for such period as may be specified in the scheme and such certificate shall be renewable for such period, in such manner and on payment of such fees as may be specified in the scheme. In view of the provisions contained in Chapter II of the Act of 2014 the Town Vending Committee and in the instant case in view of the Notification dated 13.08.2014, the City Town Vending Committee, Guwahati Municipal Corporation has to issue the Certificate of Vending after being satisfied with the necessary verification as stipulated in the Act of 2014. On the basis of the said Certificate of Vending, the members of the Petitioners Association in W.P.(C) No.1458/2014 who have been allotted the Certificate of Vending would be entitled in terms with Chapter III of the Act of 2014 to carry on the business of street vending activities as per the terms and conditions mentioned in the Certificate of Vending. Under such circumstances, the rights under the Act of 2014, is dependent upon being issued the Certificate of Vending. In that view of the matter, this Court gives the liberty to the members of the Petitioners Association to approach the Commissioner of the Guwahati Municipal Corporation for issuance of their respective Certificate of Vending and the Commissioner of the Guwahati Municipal Corporation being the Chairman of the City Town Vending Committee is directed to take appropriate steps at the earliest so that the Certificates of Vending are issued by the City Town Vending Committee, Guwahati Municipal Corporation in terms with Section 4 of the Act of 2014 subject to the verification in terms with Section 7 of the Act of 2014.

31. This Court further directs the Commissioner of the Guwahati Municipal

Corporation, who is the Chairman, City Town Vending Committee to allocate the specific area to each member of the Petitioners' Association to whom the Certificate of Vending had been issued so that the members of the Petitioner Association in W.P.(C) No. 1458/2018 can carry out their business of street vending at the earmarked location. This Court further observes that upon issuance of the Certificates of Vending to the members of the Petitioner Association, if it is found that there is no sufficient space after issuance of Certificate of Vending to accommodate all the members of the Petitioner Association, the Commissioner of the Guwahati Municipal Corporation shall take appropriate steps to allocate some other area to accommodate such members of the Petitioner Association who could not be earmarked a location though entitled to a Certificate of Vending.

32. Now coming to the Writ Petition filed by the Petitioners i.e. the Petitioners in W.P.(C) No. 1833/2018, it is seen from the Annexure-H series that there were 25 allotment letters issued to various persons. It is also seen from the additional affidavit filed by the Respondent Corporation that at present there is only two egg vendors and no fish vendors who are carrying on any trade at the ground floor. It is also relevant to take note of that these vendors claim that their rights on the basis of being fire victims in the year 1989 and 34 years have passed by till date and it is not known how many fish vendors are still carrying on any business in the fish trade. It is also seen from the resolution taken by the Mayor-in-Council that there was a decision taken that the ground floor toilets would be demolished, making way for the fish traders and it is the specific case of the Respondent Corporation that the reliefs which have been sought for in the Writ Petition had already been permitted in the said resolution. Under such circumstances, this Court is of the opinion that those fish vendors



who were the fire victims but not their representatives or assignees, are entitled to be rehabilitated by the Respondent Corporation in an area which is conducive for them to carry on their business of fish trade.

33. This Court therefore disposes of the said writ petition granting liberty to the members of the Petitioner Association in W.P.(C) No.1833/2018 who were the fire victims to approach the Commissioner, Guwahati Municipal Corporation seeking allotment of spaces at the ground floor of the Guwahati Municipal Market, Fancy Bazar. The Commissioner, GMC on such application being submitted, after making necessary verification shall allocate vending areas to such fire victims only, on the ground floor of the Guwahati Municipal Market, Fancy Bazar in terms with the provisions of the Guwahati Municipal Act, 1971 and the byelaws framed thereinunder.

34. With the above observations and directions, the three writ petitions stand disposed of.

JUDGE

Comparing Assistant