

GAHC010021562024



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

Case No. : WP(C)/650/2024

M/S HILL VIEW AND ANR
A BED AND BREAKFAST ESTABLISHMENT, SITUATED AT FLAT NO.- A-8A
AND C-1B, IDEAL HILL VIEW, VIP ROAD, PATHARQUARY, GUWAHATI,
KAMRUP (M), ASSAM, PIN- 781171, REPRESENTED BY ITS SOLE
PROPRIETOR SRI PRANAY BARUAH

2: SRI PRANAY BARUAH
SON OF SRI AJIT KUMAR BARUAH
PROPRIETOR OF M/S HILL VIEW
RESIDENT OF TALTOLA
KALITAKUCHI
ARMY CANTONEMENT
NARENGI
P.O. SATGAON
GUWAHATI
KAMRUP (M)
PIN- 78102

VERSUS

GUWAHATI MUNICIPAL CORPORATION AND 4 ORS
REPRESENTED BY ITS COMMISSIONER, G.M.C.H. ROAD, BHANGAGARH,
GUWAHATI, PIN- 781005, KAMRUP (M), ASSAM

2:THE COMMISSIONER
GUWAHATI MUNICIPAL CORPORATION
G.M.C.H. ROAD
BHANGAGARH
GUWAHATI
PIN- 781005
KAMRUP (M)
ASSAM

3:THE COMMISSIONER

GUWAHATI MUNICIPAL CORPORATION
HEALTH BRANCH
LAKHTOKIA
GUWAHATI
PIN- 781001
KAMRUP (M)
ASSAM

4:THE JOINT COMMISSIONER
GUWAHATI MUNICIPAL CORPORATION
HEALTH BRANCH
LAKHTOKIA
GUWAHATI
PIN- 781001
KAMRUP (M)
ASSAM

5:THE SENIOR MEDICAL OFFICER
GUWAHATI MUNICIPAL CORPORATION
HEALTH BRANCH
LAKHTOKIA
GUWAHATI
PIN- 781001
KAMRUP (M)
ASSAM

Advocates for the petitioner	:	Mr. P Bhardwaj Ms. B Devi
Advocates for the respondents	:	Mr. S Bora Standing counsel Guwahati Municipal Corporation

B E F O R E
HON'BLE MR. JUSTICE DEVASHIS BARUAH

16.07.2024

JUDGMENT & ORDER(ORAL)

Heard Mr. G Bhardwaj, the learned counsel appearing on behalf of the petitioners. Also heard Mr. S Bora, the learned standing counsel, Guwahati Municipal Corporation.

2. The instant writ petition has been filed by the petitioner challenging the notice dated 20.01.2024 issued by the Commissioner Guwahati Municipal Corporation whereby the petitioner's proprietorship firm was directed to close down its trade of home stay which the petitioner was carrying out in Flat Nos.A-8A & Flat No.C-1B, situated at Ideal Hill View, VIP Road, Patharquarry, Guwahati, Kamrup(M), within Ward No.24 (old) 58 (new) of the Guwahati Municipal Corporation.

3. The brief facts leading to the filing of the instant writ petition is that the petitioner No.2 herein, who is the proprietor of a firm in the name and style of M/s. Hill View, which is the petitioner No.1 was running a bed and breakfast establishment in a flat owned by him being Flat No.-A-8A and another flat rented by him which was Flat No.-C-1B in the Ideal Hill View Apartment. Admittedly, the petitioner had a trade license for "Home Stay" having up to 15 beds (NON Air Conditioned establishment) for Flat No.A-8A. However, the petitioner No.2 did not have any trade license for running the bed and breakfast establishment for Flat No.C-1B which the petitioner had newly rented from its owner. Under such circumstances, the impugned notice was issued on

20.01.2024 by the Commissioner Guwahati Municipal Corporation for closing down the trade carried out by the petitioner in both the flats immediately, failing which, the premises would be sealed without any further intimation. The petitioners being aggrieved have therefore approached this Court by filing the instant writ petition.

4. This Court vide order dated 04.03.2024 had issued notice. Subsequent thereto, an affidavit has been filed by the Guwahati Municipal Corporation through its Joint Commissioner stating *inter alia*, that the bed and breakfast establishment/home stay etc. is a commercial activity for generating income against short term accommodation facilities along with other services and as such, trade license under Section 180 of the GMC Act, 1971 (for short the Act of 1971) read with Guwahati Municipal Corporation (Regulation hotel, boarding house, rest house, restaurants, rooms, residential club and places of public recreation, entertainment or resorts) Bye Law, 1976 is mandatory being covered under the definition of 'lodging houses' as defined in the Act of 1971 as well as the bye law of 1976. It was also stated in the said affidavit that the writ petitioner had even violated the bed and breakfast establishment guidelines, wherein the maximum bed is fixed at 12 beds, but in the trade license obtained against Flat No.A-8A is shown as 15 beds.

5. In the backdrop of the above pleadings, this Court has also taken note of that there are various other additional affidavits being filed bringing on record various documents which would show that the petitioners bed and breakfast establishment had been duly registered under the National Integrated Database of Hospitality Industry.

6. Mr. P Bhardwaj, the learned counsel for the petitioners submits that the petitioners had trade license for the Flat No.A-8A which was valid up till 31.03.2024 and under such circumstances, the respondent authorities could not have directed the closing down of the Flat No.A-8A vide the impugned notice. He further submits that as regards the Flat No. Flat No.C-1B, the same was a newly rented premises and the petitioner was taking appropriate steps to obtain the trade license in the financial year, in question.

7. He further submits that the petitioner is not adverse to obtaining the trade license for running the bed and breakfast establishment.

8. Per contra, Mr. S Bora, the learned counsel appearing on behalf of the Guwahati Municipal Corporation submits that the bed and breakfast establishment of the petitioners come within ambit of the definition of lodging house' as defined in the Act of 1971 as well as the bye-laws of 1976 and as such, it is the requirement of law that the petitioners have to obtain the trade license before carrying out any trade, profession or calling. He, therefore, submits that there is no infirmity in the impugned notice in so far as closing down of the Flat No.C-1B.

9. Rejoining to the earlier argument, Mr. P Bhardwaj, the learned counsel for the petitioners further submits that the impugned notice dated 20.01.2024 further stipulates that the petitioner had failed to obtain the 'No Objection Certificate' from the residents of the Ideal Hill View Housing Complex and that

cannot be a reason for the purpose of issuance of the impugned notice, *inasmuch as*, the same would be nothing, but a malice in law, for which the impugned notice is required to be interfered with.

10. I have heard the learned counsels appearing on behalf of the parties and have given anxious consideration to the respective submissions.

11. This Court has also taken note of Section 180 of the GMC Act, 1971 which stipulates that every person, who exercises or carries in the city, either by himself or by any agent or representative, any of the professions, trades or callings indicated in the Fourth Schedule, shall annually take out a license before the first day of April in each year or within one month of his taking up the profession, trade or calling.

12. This Court has duly perused Sl.No.12 of the Fourth Schedule which includes the trade of hotel keeper, boarding house keeper, lodging house keeper, manufacture, retail trader or shop keeper.

13. This Court has also perused the definition of the 'lodging house' as defined in Section 3(44) of the Act of 1971 which stipulates a house in which visitors or other persons are lodged for hire for a night or more and where there is a community of eating or sleeping accommodation. In the opinion of this Court, the bed and breakfast facility would come within the ambit of Sl.No.12 of the Fourth Schedule read with Section 3(44) of the Act of 1971. Under such circumstances, it would be the mandate of Section 180 of the Act of 1971 that

the petitioners are required to obtain trade license for running the facility of the bed and breakfast establishment.

14. Mr. P Bhardwaj, the learned counsel appearing on behalf of the petitioners submits that the petitioners would duly apply for the license, in question. He further submits that as there is no column in the portal applying for a license for bed and breakfast establishment, this Court may seek appropriate instructions from Mr. S Bora, the learned standing counsel for the Guwahati Municipal Corporation as to under what heading the petitioner is required to apply for the trade license. Mr. S Bora, upon instruction, submits that the petitioner has to apply for the trade license for 'Home Stay'.

15. Taking into account the above, this Court is of the opinion that if the petitioners want to run the bed and breakfast facility, it would be a mandate of law that the petitioners obtains a trade license for 'Home Stay' in respect to both the Flats, in question. This Court also duly takes note of the stipulations contained in the impugned notice dated 20.01.2024, wherein it has been mentioned that the petitioner is required to obtain a No Objection Certificate from the residents of the Ideal Hill View Apartment. Nothing could be shown by the learned standing counsel, Guwahati Municipal Corporation as to under what power the said stipulation is required to be complied with by the petitioners.

16. Under such circumstances, this Court disposes of the instant writ petition with an observation that in the circumstances, the petitioner obtains the trade license for 'Home Stay', in respect to both the Flats, in question, the petitioner

would be able to run the bed and breakfast facility subject to fulfillment of other formalities which is required under the law.

17. The respondent authorities, more particularly, the Guwahati Municipal Corporation cannot insist upon the No Objection Certificate from the residents of the Ideal Hill View Apartment for permitting the petitioners to run its bed and breakfast facilities.

18. With the above, the instant writ petition stands disposed of.

JUDGE

Comparing Assistant