

GAHC010059632023



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

Case No. : Cont.Cas(C)/151/2023

MD. SAHANUR ALI
S/O- RUSTUM ALI, R/O- HOUSE NO. 62, FRIENDS PATH, HATIGAON,
GUWAHATI-38.

VERSUS

MEGHA NIDHI DAHAL
COMMISSIONER, GUWAHATI MUNICIPAL CORPORATION, BHANGAGHAR,
GUWAHATI-5.

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

Advocate for the petitioner(s): Mr. SP Roy

Advocate for the respondent(s): Mr. S Bora

JUDGMENT & ORDER(ORAL)

Date : 09-09-2024

Heard Mr. SP Roy, the learned counsel appearing on behalf of the petitioner. Mr. S Bora, the learned counsel appears on behalf of the

sole respondent.

2. The contempt proceedings has been filed alleging willful and deliberate violation of the order passed by this Court dated 10.01.2023 in WP(C)No.8460/2022. From a perusal of the materials on record, it transpires that on 21.10.2022 a show cause notice was issued by the Additional Commissioner of Guwahati Municipal Corporation (for short, the 'GMC') under Section 337(1) and (2) of the Guwahati Municipal Corporation Act, 1971 (for short, 'the Act of 1971'). The petitioner being aggrieved by the issuance of the show cause notice dated 21.10.2022 by the Additional Commissioner GMC, had filed an appeal before the Chairman, Standing Appeal Committee, which was received on 03.11.2022. Be that as it may, an order was passed on 16.12.2022 by the Commissioner, GMC in continuation of the notice dated 21.10.2022.

3. The petitioner filed a writ petition being WP(C)No.8460/2022, wherein it was alleged that the appeal filed before the Standing Committee was not taken up for consideration and the order dated 16.12.2022 was passed.

4. This Court vide order dated 10.01.2023 issued notice making it returnable by four weeks and certain interim directions were passed by this Court vide the said order dated 10.01.2023. Taking into consideration the dispute involved in the present proceedings, the relevant portion of the order dated 10.01.2023 is reproduced hereinunder:

"Issue notice returnable within four weeks.

Extra requisite copies of the writ petition be served upon the learned

standing counsel for the respondents during the course of the day.

As an interim measure, and till the next returnable date, it is provided that till the disposal of the appeal filed by the petitioner on 03.11.2022 before the Standing Appeal Committee (Annexure-13), the respondent authorities under the Guwahati Municipal Corporation shall not demolish the structures of the petitioner, which is pursuant to the Impugned Order No. GDL/UC/47/256/2022 dated 16.12.2022 (Annexure-14) and the operation of the said order dated 16.12.2022 is stayed till the disposal of the appeal referred above.

The petitioner shall produce a certified copy of this Order to the Commissioner, Guwahati Municipal Corporation being the order to the notice of the said authority.

Having regard to the grievance raised in the writ petition, this Court is also inclined to provide that the pendency of the writ petition shall not be a bar for the competent authorities of the Guwahati Municipal Corporation to revisit the Order No. GDL/UC/47/256/2022/10/408 dated 21.10.2022 (Annexure-10), passed by the Additional Commissioner, GMC, if so advised.

List the matter after four weeks."

5. Thereupon as the liberty was granted to the competent authority of the GMC, the Commissioner GMC vide an order dated 10.02.2023 recalled the notice dated 21.10.2022. Subsequent thereto, on 15.02.2023, a fresh show cause notice was issued by the Commissioner of GMC alleging that there has been certain deviations from the approved plan in respect to the front area covered by two shops and set back deviations. The petitioner was asked to show cause

within 7(seven) days as to why the said unauthorized construction should not demolished/sealed.

6. The petitioner submitted a reply on 22.02.2023, wherein the petitioner informed about the pendency of the writ petition being WP(C)No.8460/2022 as well as the order dated 10.01.2023 passed therein. It was also mentioned that the petitioner was ready to compensate the authority by way of fine, if there was any mistake regarding construction of the building. The petitioner also informed that he had demolished the two numbers of shops in front of the RCC building. Thereupon, an order was passed on 03.03.2023, whereby it was mentioned that the deviations in respect to the front, rear and the west side were non-compoundable.

7. On 04.03.2023, the demolition was carried out. The petitioner thereupon has approached this Court by filing the instant contempt application alleging that there has been a willful and deliberate violation of the order dated 10.01.2023 on the ground that there was a direction not to demolish the structures of the petitioner.

8. Pursuant to the notice being issued, the respondent had filed an affidavit, wherein the stand which has been taken is that there is no willful, intentional and deliberate violation or disobedience to the order dated 10.01.2023 passed by this Court. It was further mentioned in paragraph 12 that the show cause notice dated 21.10.2022 was cancelled/recalled vide order dated 10.02.2023 and thereby the appeal so filed under Section 438 of the Act of 1971 on

03.11.2022 had become redundant. In addition to that, it has been mentioned that a fresh show cause notice was issued under Section 337(1) and (2) of the Act of 1971 dated 15.02.2023 which is completely a fresh cause of action. It was also mentioned that a reply was submitted on 22.02.2023 to the show cause notice and thereupon an order was passed on 03.03.2023.

9. In addition to that, it is seen that it is the stand taken by the respondent that the action so taken was on a *bona fide* belief in view of the fact that the GMC authorities were given the liberty in the penultimate paragraph of the order dated 10.01.2023. It was also mentioned that if for any *bona fide* act, the order dated 10.01.2023 passed in WP(C)No.8460/2022 had been violated in any manner, the respondent tendered his unconditional apology.

10. This Court had duly heard the learned counsel appearing on behalf of the petitioner as well as the learned counsel appearing on behalf of the respondent and has also given an anxious consideration to the respective submissions. The question, therefore, arises as to whether this is a fit case for initiation of contempt proceedings against the respondent. It is seen from the order dated 10.01.2023 that the petitioner had challenged the order dated 16.12.2022 passed by the Commissioner GMC on the ground that an appeal has been preferred against the notice dated 21.10.2022 issued by the Additional Commissioner, GMC which was pending before the Standing Appeal Committee. It is under such circumstances, taking into account that on one hand the appeal has been preferred and on the other hand, the order dated 16.12.2022 was passed, this Court directed that till the disposal of the appeal filed by the

petitioner on 03.11.2022, the respondent authorities under the GMC shall not demolish the structures of the petitioner, which is pursuant to the order dated 16.12.2022 and the operation of the order dated 16.12.2022 was stayed till the disposal of the appeal. It is also to be noted that this Court granted the liberty to the competent authorities of the GMC to revisit the notice dated 21.10.2022 passed by the Additional Commissioner, GMC, if so advised.

11. Vide the order dated 10.02.2023, the notice dated 21.10.2022 was withdrawn. Upon withdrawal of the said notice dated 21.10.2022, all follow up actions, including the order dated 16.12.2022 had become redundant. It is also to be taken note of that with the withdrawal of the notice dated 21.10.2022, the appeal which was filed against the said notice had also become infructuous.

12. This Court has also taken note of that pursuant to the withdrawal of the notice dated 21.10.2022, the petitioner was issued a fresh show cause notice on 15.02.2023. The petitioner thereupon did not approach this Court by filing any interlocutory application, rather submitted a reply on 22.02.2023 and thereupon the order was passed on 03.03.2023. It is also to be taken note of that all these actions were taken on the basis of the liberty so granted to the GMC authorities vide the order dated 10.01.2023. It is also to be kept in mind that the direction not to demolish the structures was on the basis of the order dated the 16.12.2022 and as such as the demolition was not in pursuance to the order dated 16.12.2022, but on the basis of the order dated 03.03.2023. Under such circumstances, this Court is of the opinion that the same would not come within the ambit of a willful and deliberate violation of the order dated 10.01.2023

passed by this Court. Accordingly, this Court finds no merit in the instant contempt proceedings, for which, the contempt proceedings stands dropped.

JUDGE

Comparing Assistant