

GAHC010006182011



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

Case No. : WP(C)/2889/2011

ON THE DEATH OF DILIP KR. MAZUMDAR HIS LEGAL HEIRS SUCHETA
MOZUMDER, W/O LT. DILIP KUMAR MAZUMDAR
R/O C/O NALANDA BOOK STORES, PNGB ROAD, MALIGAON CHARIALI,
GHY-11.

1.2: MANDIP MOZUMDER
S/O DILIP KR. MAZUMDAR
R/O C/O NALANDA BOOK STORES
PNGB ROAD
MALIGAON CHARIALI
GHY-11

1.3: SABITA MOZUMDER
D/O DILIP KR. MAZUMDER
R/O C/O NALANDA BOOK STORES
PNGB ROAD
MALIGAON CHARIALI
GHY-11
AND PRESENTLY RESIDING AT 7655 NORTH FM 620
APARTMENT 414
AUSTIN-78726
TEXAS
USA

VERSUS

THE GAUHATI METROPOLITAN DEVELOPMENT AUTHORITY
REP. BY ITS CHIEF EXECUTIVE OFFICER, HAVING ITS OFFICE AT
BHANGAGAH, GUWAHATI-5

2:DR. PRASANNA KUMAR MOZUMDAR
S/O LT. NARENDRA KUMAR MOZUMDAR
R/O P N G BARUAH PATH
MALIGAON CHARIALI

GHY-11 ASSAM

Advocate for the Petitioner : MR.K RAJBONGSHI, MS.M TALUKDAR,MR.R P N SINGH,MR.S P ROY,MS. K KALITA

Advocate for the Respondent : SC, G M D A, MR.A K JAIN,MS.M HAZARIKA,MS.R D MOZUMDAR

Linked Case : WP(C)/948/2011

DR. PRASANNA KUMAR MOZUMDAR
S/O LT. NARENDRA MOZUMDAR
PNG BARUAH PATH
MALIGAON
GHY-11
P.S. JALUKBARI

VERSUS

THE STATE OF ASSAM AND ORS
REP. THROUGH THE SECY
GUWAHATI DEVELOPMENT DEPTT
DISPUR
GHY-6

2:GUWAHATI MUNICIPAL CORPN

REP.THROUGH THE COMMISSIONER
PANBAZAR
GHY-1

3:GUWAHATI METROPOLITAN DEVELOPMENT AUTHORITY

REP. THROUGH THE CHIEF EXECUTIVE OFFICER
BHANGAGARH
GHY-5

4.1:ON THE DEATH OF DILIP KUMAR MAZUMDAR
HIS LEGAL HEIRS NAMELY a. SMTI SUCHETA MAJUMDER
W/O LT. DILIP KUMAR MAZUMDAR
PNG BARUAH PATH
MALIGAON
GHY-11
P.S JALUKBARI

4.2:SABITA MAJUMDER

D/O LT. DILIP KUMAR MAZUMDAR
PNG BARUAH PATH
MALIGAON
GHY-11
P.S JALUKBARI

4.3:MANJIT MAJUMDER
S/O LT. DILIP KUMAR MAZUMDAR
PNG BARUAH PATH
MALIGAON
GHY-11
P.S JALUKBARI

Advocate for : MR.A K JAIN

Advocate for : MS.A TALUKDAR appearing for THE STATE OF ASSAM AND ORS

**BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

JUDGMENT (ORAL)

Date of hearing: 20-09-2024

Date of Judgment: 20-09-2024

Heard Mr. SP Roy, learned counsel for the petitioner in WP(C) 2889/2011. Also heard Mr. S Bora, learned standing counsel for the GMDA and Ms. RD Mozumdar, learned counsel for the respondent No. 2 in WP(C) 2889/2011.

2. These two writ petitions are taken up together for final disposal as the subject matter are connected, contesting parties are same.
3. The brief facts and the subject dispute in each of the petitions are recorded hereinbelow:
4. **WP(C) 2889/2011**
 - (i) By filing WP(C) 2889/2011, the petitioner has challenged an order dated 12.05.2011 passed by the Chief Executive Officer, Gauhati Metropolitan Development Authority, Bhangagarh, Guwahati in exercise of power under Section 88 of the GMDA Act, 1985. The said order discloses that according to the respondent authorities, the petitioner has constructed his house over the Dag No. 489(O)/480/484/485 (N) patta No. 6 (O)/ 38 (N) of the revenue village of Maligaon Mouza Jalukbari, Guwahati beyond the terms of the NOC issued in favour of the petitioner for construction of such building. The order

dated 12.05.2011 also reflects that notice under Section 87 of the GMDA Act, 1985 was served upon the petitioner to show cause.

- (ii) Thereafter, the petitioner filed a representation before the Chief Executive Officer, GMDA on 27.05.2011, inter-alia, contending that the purported notice dated 23.03.2011 has not been served upon the petitioner or any of his family member and therefore, he did not have any scope to file any reply to the notice dated 23.03.2011. A further issue was raised in the writ petition that in terms of the Section 87(1) of the GMDA Act, a show cause notice is mandatory to be served, then only demolition can be made. It was also contended in the representation that as per Section 88(1) of the Act, no demolition order can be passed without giving reasonable opportunity to show cause to the affected party and accordingly, it was prayed that an opportunity of hearing should be granted to the petitioner.
- (iii) Thereafter, when nothing was forthcoming, the petitioner approached this court by filing the present writ petition and this court under its order dated 08.06.2011 granted an interim protection to the petitioner as regards affecting the demolition in question.
- (iv) Though the matter was pending since 2011, the GMDA authority has not filed any affidavit. An affidavit-in-opposition is filed by the respondent No. 2, who is the brother of the petitioner, who is the writ petitioner in WP(C) 948/2011.

5. **WP(C) 948/2011**

- (i) For brevity, the petitioner in WP(C) 948/2011 is described as respondent No. 2 as he is the respondent No. 2 in WP(C) 2889/2011 and the word petitioner is used to describe the petitioner in WP(C) 2889/2011.
- (ii) The case projected by the respondent No. 2 is that dispute between the petitioner and the respondent No. 2 was pending as regards the actual possession of the petitioner and his mother so far relating to the disputed land and that the respondent No. 2 requested the GMDA not to give any permission for construction to the petitioner. However, GMDA by ignoring the said application, gave permission to the petitioner for construction of building. Such action resulted in grabbing of land illegally by the petitioner, which actually belonged to all the legal heirs of late Jogabala Mazumdar, who is the mother of both the petitioner and the respondent No. 2.

- (iii) Thereafter, an RTI application was filed before the GMDA by the respondent No. 2 and accordingly, the GMDA replied that no such permission was granted to the petitioner. The respondent No. 2 preferred WP(C) 948/2011 against the alleged construction carried out by the petitioner. However, according to the respondent No. 2 in the proceeding of WP(C) 948/2011, the GMDA took a stand that in fact permission for construction was given to the petitioner.
- (iv) It is the case of the respondent No. 2 that the petitioner is not the sole owner and possessor of the land where the construction was carried out and the land belongs to Late mother of the respondent No. 2, present petitioner and others and they have right over the land for joint possession.
- (v) It is also important to record herein that in the meantime, the dispute between the parties as regards their claims over the land on the basis of inheritance from their mother went up to the Assam Board of Revenue, which by an order dated 16.09.2010, directed the Deputy Commissioner to examine certain things and take a decision which is quoted herein below:

“i) The status of land at the time when the recommendations were made for its settlement on 02.01.87. If it was an Annual Patta land which was wrongly shown as La Khiraj standing in the name of Kamakhya Temple in the draft chitta and thereafter action was taken to settle it in favour of the persons in possession under the provisions of the Religious Institutions Act, this would clearly be a case of fraud. Being a fraud the settlement is invalid ab initio. The learned Deputy Commissioner shall proceed to cancel the settlements made in such a situation. All subsequent transfers would also be invalid. He shall also file a criminal case against all persons involved including Revenue Officials.

ii) The occupation of land by different persons has been clearly shown in the letter of the learned Deputy Commissioner dated 2.1.87 and recommendations have been made for settlement accordingly. In this, Smti. Jogabala Mazumdar has been stated to be in possession on 1K-8L of land and Shri Dilip Mazumdar has been shown to be in possession on 5L of land. If everything is found in order and settlement has to be given, it should be given separately accordingly. The circumstances should be examined as to how the land increased from 1 K 13 L to

2K 6L as per the statement of the Appellant and the Settlement Officer and 2K 13L as per the statement of the respondent no. 2. This appears to be a second element of fraud wherein apparently a joint patta was issued to create confusion on the total and a larger area has been settled then what was found in their possession and recommended for settlement. A criminal case may be registered on this issue also.

iii) How the land revenue was being paid by Smti Jogabala Mazumdar and others for more than 30 years without the land being in their names. The statement to this effect has been made in the letter of the Deputy Commissioner mentioned above to strengthen the case of the petitioners for getting settlement of the land from the Government.”

(vi) A further direction was issued to the Deputy Commissioner to complete their exercise as expeditiously as possible and in any case within six months and it was further directed that till such order is passed, the Sub-registrar or any other authority shall ensure that the land involved is not transferred by way of sale or lease etc. to anybody by the pattadar.

6. In the meantime, the petitioner preferred another writ petition being WP(C) 6395/2010 assailing the order dated 16.09.2010 passed by the Assam Board of Revenue in Appeal Case No. 155 RA (K)/2003 as recorded hereinabove. This court declined to interfere with the determination made by the Assam Board of Revenue and disposed of the writ petition by its order dated 09.11.2023 with a further observation that while making the re-examination in terms of the Board of Revenue's order, the Deputy Commissioner shall issue notice to the petitioner as well as the respondent No. 2 including other pattadar of Kheraj Patta No. 49 and give them an opportunity of hearing before arriving at the decision. A further liberty was granted to the legal heirs of the original pattadar i.e. Jogabala Mozumdar to appear before the learned Deputy Commissioner and to raise their claims on the basis of right of inheritance based on their mother's right. It is submitted by the learned counsel that that such order has not been complied till date.
7. On the other hand, as regards the prayer made in the connected with petition i.e. WP(C) 948/2011, the petitioner in the aforesaid backdrop as recorded hereinabove has prayed that the GMDA should enquire into the matter of construction of the building by the petitioner and submit a report thereof and in the event, an unauthorised and illegal construction is found, that should be directed to be demolished. In this context, Ms. RD Mozumdar, learned counsel

submits that it is the contention of the petitioner that the NOC was obtained by the petitioner by giving a false declaration in the name of dead person i.e. their mother, who expired on 16.01.1996, whereas no objection in the name of the mother was given in the year 2009.

8. Be that as it may, to summarise the issues, the case of the GMDA is that the petitioner in WP(C) 2889/2011 has made illegal construction beyond the NOC issued to it. It is the case of the petitioner in WP(C) 2889/2011 that such notice is in violation of the principles of natural justice and in derogation of the prescribed procedure under Section 87 and 88 of the GMDA Act. The GMDA has not filed any affidavit countering such fact. The fact also remains that the petitioner immediately filed representation and prayed for an opportunity of hearing. Therefore, in the considered opinion of this court and in the backdrop of non-filing of any affidavit or non-producing of any material to conclude that principle of natural justice was followed, this court will have to hold that the order was passed in purported exercise of Section 88 of the GMDA Act and it shall not be sustainable under law for non-adherence of principle of natural justice as mandated under Subsection 1 of Section 88 of the Act.
9. Now coming to the dispute raised by the petitioner in WP(C) 948/2011 as recorded hereinabove, is relatable to their claims over the plot of land wherein the petitioner has constructed the house. An enquiry has been directed by the Board of Revenue to the Deputy Commissioner to ascertain the issue, however, upholding the order of the Board of Revenue, this court in 6395/2010 specifically observed that if the issues of title relating to the partition amongst the heirs of late Jogabala Mazumdar arises, the Deputy Commissioner may refer the parties to the Civil Court in terms of Section 100 of the Assam Land and Revenue Regulation.
10. So far relating to the prayer of the writ petition in the considered opinion of this court, the GMDA authority or GMC authority shall be within their jurisdiction to look into whether the NOC granted to the petitioner to construct the building is complied with i.e. whether the petitioner has constructed the building in terms of the NOC issued and in the considered opinion of this court the GMDA and GMC authority shall not be within its jurisdiction to pass an order of demolition/ eviction on the basis of the ownership of the land and / or claim and entitlement of the pattadar of the said land and such issues either is to be decided by the revenue authority if it is not relatable to the title and by the competent civil court when it relates to the title. In view of the aforesaid determination, the prayer made in the WP(C) 948/2011 has already been redressed by issuing a notice to the petitioner by the GMDA. Therefore, nothing

survives to be adjudicated in the said writ petition.

11. Therefore, in the totality of the matter, it is provided that the petitioner in WP(C) 2889/2011 shall file a reply to the show cause notice (annexure 6) within 30th October, 2024. Thereafter, the Chief Executive Officer, GMDA give a hearing to the petitioner and determine the issue. It is also provided that as the respondent No. 2/ petitioner in WP(C) 948/2011 also claims to be an interested party, the said respondent may also be heard by the Chief Executive Officer.
12. With the aforesaid, the writ petitions stand disposed of.

JUDGE

Comparing Assistant