

GAHC010018402024



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

Case No. : WP(C)/462/2024

HABIBAR MOLLAH
S/O BILAT MOLLAH, VILL- JHOGRARPAR PART-I, P.O.-JHOGRARPAR, P.S.-
DHUBRI, DIST-DHUBRI, ASSAM, PIN-783325

VERSUS

THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM,
HOUSING AND URBAN AFFAIRS DEPTT AND 11 ORS
GOVT. OF ASSAM, DISPUR, GUWAHATI-781006

2:THE DIRECTOR OF TOWN AND COUNTRY PLANNING
DISPUR
GUWAHATI-781006

3:THE DISTRICT COMMISSIONER
DHUBRI
DIST-DHUBRI
ASSAM
PIN-783330

4:THE CIRCLE OFFICER
DHUBRI REVENUE CIRCLE
DIST-DHUBRI
ASSAM
PIN-783330

5:THE CHAIRMAN
DHUBRI-GAURIPUR DEVELOPMENT AUTHORITY
(AN AUTONOMOUS BODY UNDER THE TOWN AND COUNTRY PLANNING
ACT
1959)
DIST- DHUBRI

ASSAM
PIN-783330

6:THE SECRETARY
JHOGRARPAR GAON PANCHAYAT
VILL-JHOGRARPAR
P.O.-JHOGRARPAR
DIST-DHUBRI
ASSAM
PIN-783325

7:SMTI. BHARATI PAUL
W/O MRINAL KANTI PAUL
(D/O VIM BALLAB PAUL)
R/O WARD NO. 15
DHUBRI TOWN
P.O. AND P.S.-DHUBRI
DIST- DHUBRI
ASSAM
PIN-783330

8:SMTI. SNIGDHA HARLALKA
D/O BIMAL HARLALKA
R/O WARD NO. 7
H.N. ROAD
DHUBRI TOWN
P.O. AND P.S.-DHUBRI
DIST- DHUBRI
ASSAM
PIN-783330

9:SMTI. SRADHA HARLALKA
D/O BIMAL HARLALKA
R/O WARD NO. 7
H.N. ROAD
DHUBRI TOWN
P.O. AND P.S.-DHUBRI
DIST- DHUBRI
ASSAM
PIN-783330

10:BIMAL HARLALKA
POWER OF ATTORNEY HOLDER OF SNIGDHA HARLALKA
S/O CHANMAL HARLALKA
R/O WARD NO. 7
H.N. ROAD
DHUBRI TOWN
P.O. AND P.S.-DHUBRI

DIST- DHUBRI
ASSAM
PIN-783330

11:DILBAR MOLLAH
S/O LATE KAMAL UDDIN MOLLAH
R/O JHOGRARPAR PART-I
P.O.-JHOGRARPAR
P.S.-DHUBRI
DIST-DHUBRI
ASSAM
PIN-783325

12:AZIAL HOQUE
S/O HURMUJ ALI
R/O JHOGRARPAR PART-I
P.O.-JHOGRARPAR
P.S.-DHUBRI
DIST-DHUBRI
ASSAM
PIN-78332

Advocate for the Petitioner : MR J ABEDIN

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 30-01-2024

Heard Mr. J. Abedin, learned counsel for the petitioner; Ms. S. Chutia, learned counsel representing Mr. P. Nayak, learned Standing Counsel, Housing and Urban Affairs Department for the respondent nos. 1 & 2; and Mr. N. Goswami, learned Junior Government Advocate, Assam for the respondent nos. 3 & 4.

2. In view of the issues raised in this writ petition instituted under Article 226 of the Constitution of India, this Court after hearing the learned counsel for the

parties, finds that the writ petition can be disposed of at the motion stage itself without issuing any notices to the other party-respondents impleaded in this writ petition.

3. The petitioner has stated that he is compelled to approach this Court due to issuance of three similar kinds of notices – dated 14.02.2018, dated 18.08.2023 and dated 06.01.2024 – by the Dhubri Gauripur Development Authority, Dhubri over a period of 6 [six] years, without bringing the process into any conclusion despite submission of written replies by the petitioner to all the three notices. As despite submission of replies to the notices the process initiated by the Dhubri Gauripur Development Authority, Dhubri has not been brought to any conclusion, the petitioner is before this Court.

4. Mr. Abedin, learned counsel for the petitioner has submitted that the plot of land, situate at Jhagarpar Part-I, Dhubri, on which the petitioner has constructed the concerned building, is under occupation of the petitioner since the year 2011. The petitioner has further contended that the building has been constructed after obtaining permission from the concerned Gaon Panchayat authorities. It is the further case of the petitioner that the plot of land does not come within the territorial jurisdiction of the Dhubri Gauripur Development Authority, Dhubri and as such, the notices issued to the petitioner are without jurisdiction.

5. Ms. Chutia and Mr. Goswami, learned counsel appearing for the aforementioned respondents have submitted that by the said notices, the petitioner had/has been asked to submit few documents like building permission, approved plan along with land documents of the petitioner relating to the petitioner's residential/commercial building at Jhagarpar Part-I, Dhubri, etc. It

has been contended that the notices do not go to show that the same are under the provisions of sub-section [4A] of Section 13 of the Assam Town and Country Planning Act, 1959 [‘the Act, 1959’, for short]. According to the learned counsel for the respondents, the notices are only for the purpose of a fact finding enquiry as the notices have clearly indicated that necessary action under the provisions of the Act, 1959 would be taken only in the event of failure on the part of the petitioner to submit necessary documents, as have been asked for by the notices, and the notices are silent about any action like demolition of the building, etc.

6. On perusal of the contents of the notices, which are more or less similarly worded, it is noticed that the petitioner had/has been asked by the Dhubri Gauripur Development Authority, Dhubri to submit no objection certificate for the building permission, approved plan along with land documents in relation to the residential/commercial building at Jhagarpar Part-I, Dhubri, etc.

7. The notices have indicated that in the event of failure on the part of the petitioner, necessary action under the provisions of the Act, 1959 would be taken. The petitioner has averred that he had/has responded to all the three notices by submitting replies in writing. As per the provisions of the Act, 1959, a Development Authority constituted under Section 8A of the Act, 1959 exercises jurisdiction over such area as specified by the State Government in the concerned Notification published in the Official Gazette. Sub-section [4A] of Section 13 of the Act, 1959 reads as under :-

[4A] If any person carries out any development work or retains the use of any building or work or continues the use of land in contravention of the provisions of Section 13 or of any permission granted under sub-section [1]

of this section, the Authority may direct such person, by notice in writing, to stop further progress of such work or to discontinue any use and may, after making an inquiry in the prescribed manner, remove or pull down any building or work carried out and restore the land to its original condition or, as the case may be.

8. The petitioner has also raised an apprehension that the building constructed by him might be demolished by the Dhubri Gauripur Development Authority, Dhubri in course of time. The provision contained in sub-section [4A] of Section 13 of the Act, 1959 goes to indicate that if any Development Authority contemplates any action to remove or pull down any construction, the same has to be preceded by a show cause notice and after making an enquiry in the prescribed manner. 'Prescribed', as per Section 2[13] of the Act, 1959, means prescribed by rules made under the Act, 1959.

9. In so far as a show cause notice is concerned, by a show cause notice, a noticee is asked to respond to the proposed action, indicated in the notice. At the time of issuance of a show cause notice, the rights and obligations of the parties are decided finally. The event of a show cause notice is a step towards taking a final decision in the matter by a competent authority. A tentative view taken in the process cannot be deemed to be the final view in the matter as the final view in the matter will be dependent upon the response received from the noticee and if the noticee is able to show sufficient cause as to why no action as contemplated by the show cause notice should be taken the final view may altogether be different and the competent authority might drop the proceeding finally. It is settled position of law that ordinarily, a writ petition is not entertained against a mere show cause notice as a writ lies only when some right of any right is infringed. A mere show cause notice does not give rise to

any cause of action because it does not amount to an adverse order which affects the rights of any party. It is only when a final order is passed affecting a party the affected party can be said to have any grievance/cause of action. The writ jurisdiction under Article 226 of the Constitution of India which is extraordinary and discretionary, is not ordinarily exercised to quash a show cause notice, save and except in some exceptional cases like want of jurisdiction on the part of the authority to issue the show cause notice, etc. Thus, in view of the above, the present writ petition is considered to be a premature one and the same is not to be entertained. It is accordingly observed.

10. Notwithstanding the above observation, perusal of the contents of the notices indicated above, issued by the Dhubri Gauripur Development Authority, Dhubri, do not go to show that they fall in the category of a show cause notice. Assuming, *arguendo*, they are show cause notice then also any action like removal of building, etc. can be taken only after passing a final order and after serving a copy of the final order to the petitioner. From the contents of the notices, it transpires *prima facie* that they have been issued in the process of a fact finding enquiry. The petitioner has stated that the petitioner had/has already responded to all the three notices by submitting his replies in writing. It also appears to the Court that the Dhubri Gauripur Development Authority, Dhubri has been issuing similar kind of notices over a period of 6 [six] years to the petitioner without indicating the outcome of the process initiated by the notices.

11. In such view of the matter, it is observed that the process initiated by the three notices indicated above, should be brought to a conclusion by the Dhubri Gauripur Development Authority, Dhubri as expeditiously as possible, by passing

a final order and thereafter, informing the outcome of the same to the petitioner. This Court would further like to observe that if the Dhubri Gauripur Development Authority, Dhubri contemplates any action like removal of the building, as apprehended by the petitioner, then such action must be in strict adherence to the provisions contained in the Act, 1959, more particularly, Section 13 thereof. The petitioner is at liberty to submit a certified copy of this order before the Dhubri Gauripur Development Authority.

JUDGE

Comparing Assistant