

GAHC010012762021



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

Case No. : WP(C)/808/2021

UTTAM KUMAR SARDA AND 19 ORS
S/O. LT. HARI CHAND SARDA, R/O. JANIGANJ BAZAR, P.O. AND P.S.
SILCHAR, DIST. CACHAR, ASSAM.

2: SARLA DEVI SARDA
W/O. LT. BIJOY KUMAR SARDA
R/O. JANIGANJ BAZAR
P.O. AND P.S. SILCHAR
DIST. CACHAR
ASSAM.

3: DIPAK KUMAR SARDA
S/O. LT. BIJOY KUMAR SARDA
R/O. 29/1
BLOCK-C
2ND FLOOR
BAGUR AVENUE
KOLKATA.

4: SMT. BABITA BAGRI
W/O. SRI NARAYAN BAGRI
R/O. FLAT NO.2B
2ND FLOOR
BLOCK E
SIGNATURE ESTATE
OPP. DGP OFFICE
ULUBARI
GUWAHATI
DIST. KAMRUP (M)
ASSAM.

5: KRISHNA RATHI
W/O. SRI MAJOJ RATHI
R/O. JRIJ DULAL STREET

KOLKATA.

6: SMT. SHRISTI FORMA
W/O. SRI ABHISHEK FORMA
R/O. 15 APPA GARDEN STREET
NEAR CHINMAYA VIDYALAYA SCHOOL
KILPAUK
CHENNAI.

7: SMT. LALITA RATHI
W/O. SRI SHYAM RATHI
R/O. NO.9 HAT LANE
5TH FLOOR
MULLICK FATAK
HOWRAH
WEST BENGAL.

8: SMT. RATNA DEVI SARKA
W/O. LT. AJAY KUMAR SARDA
R/O. BHAWANI TOWER
FLAT NO.1E
KASTAPUR
KOLKATA-700102.

9: LAZSHMI NARAYAN SARDA
S/O. LT. AJAY KUMAR SARDA
R/O. BHAWANI TOWER
FLAT NO.1E
KASTAPUR
KOLKATA-700102.

10: GANESH SARDA
S/O. LT. AJAY KUMAR SARDA
R/O. BHAWANI TOWER
FLAT NO.1E
KASTAPUR
KOLKATA-700102.

11: SMTI. JYOTI THIRANI
W/O. SRI RAHUL THIRANI
R/O. BHAWANI TOWER
FLAT NO.1E
KASTAPUR
KOLKATA-700102.

12: SUSHIL SANKAR SARDA
S/O. LT. HARI CHAND SARDA
R/O. JANIGANJ BAZAR

SILCHAR
ASSAM.

13: AJIT KUMAR SARDA
S/O. LT. HARI CHAND SARDA
R/O. JANIGANJ BAZAR
SILCHAR
ASSAM.

14: SMT. SUMAN DEVI SARDA
W/O. LT. ASHOK KUMAR SARDA
R/O. JANIGANJ BAZAR
P.O. AND P.S. SILCHAR
DIST. CACHAR
ASSAM.

15: SMT. PUJA BAGRI
W/O. SRI MAYANK BAGRI
R/O. 50
BENI NANDAN STREET
FLAT-1B
1ST FLOOR
NEAR POLICE HOSPITAL
BHAWANIPORE
KOLKATA.

16: ASHIS SARDA
S/O. LT. ASHOK KUMAR SARDA
R/O. JANIGANJ BAZAR
P.O. AND P.S. SILCHAR
DIST. CACHAR
ASSAM.

17: SMT. SHOVA DEVI CHANDAK
W/O. BHANWAR LAL CHANDAK
R/O. 201 MAHESHWARI DEVENDRA ROAD
DALPATTY
KOLKATA.

18: SMT. USHA DEVI BHATTER
W/O. LT. GOURI SHANKAR BHATTER
R/O. 24 PARGANA
HOWRAH
KOLKATA.

19: SMT. SUNITA DAGA

W/O. SRI PRABEEN DAGA

R/O. 12 MAIN ROAD
SINGMA BUILDING
3RD FLOOR
ANAND NAGAR
WEST CHENNAI.

20: SMT. SANGITA BINANI
W/O. MAHESH BINANI
R/O. SHYAMNAGAR ROAD
DIAMOND CITY NORTH
23 BLOCK
5E
KOLKATA

VERSUS

THE STATE OF ASSAM AND 10 ORS
REP. BY THE COMM. AND SECY., GOVT. OF ASSAM, MUNICIPAL
ADMINISTRATION DEPTT., DISPUR, GUWAHATI-781006.

2:THE DIRECTOR

MUNICIPAL ADMINISTRATION DEPTT.
DISPUR
GUWAHATI-781006.

3:THE SILCHAR MUNICIPAL BOARD

REP. BY ITS CHAIRMAN
SADAR GHAT
SILCHAR-788001
DIST. CACHAR
ASSAM.

4:THE EXECUTIVE OFFICER

SILCHAR MUNICIPAL BOARD
SADAR GHAT
SILCHAR-788001
DIST. CACHAR
ASSAM.

5:SMT. YASHODA YADAV
W/O. LT. RAMDEO GOALA
R/O. WARD NO.6
UKILPATTY
PARGONA BARAKPAR
MOUZA SILCHAR TOWN

DIST. CACHAR
ASSAM
PIN-788001.

6:SANTOSH KUMAR YADAV
S/O. LT. RAMDEO GOLA
R/O. WARD NO.6
UKILPATTY
PARGONA BARAKPAR
MOUZA SILCHAR TOWN
DIST. CACHAR
ASSAM
PIN-788001.

7:SMT. RENU YADAV
W/O. LT. KISHORE GOLA
R/O. WARD NO.6
UKILPATTY
PARGONA BARAKPAR
MOUZA SILCHAR TOWN
DIST. CACHAR
ASSAM
PIN-788001.

8:KRISHNA YADAV
S/O. LT. RAJKUMAR YADAV
R/O. WARD NO.6
UKILPATTY
PARGONA BARAKPAR
MOUZA SILCHAR TOWN
DIST. CACHAR
ASSAM
PIN-788001.

9:RAJ KUMAR YADAV
S/O. LT. CHADRADEV YADAV
R/O. WARD NO.6
UKILPATTY
PARGONA BARAKPAR
MOUZA SILCHAR TOWN
DIST. CACHAR
ASSAM
PIN-788001.

10:SMT. KAMALA DEVI YADAV
W/O. LT. RAJ KUMAR YADAV
R/O. WARD NO.6
UKILPATTY

PARGONA BARAKPAR
MOUZA SILCHAR TOWN
DIST. CACHAR
ASSAM
PIN-788001.

11:RAJESH KUMAR YADAV
S/O. LT. RAGHUNATH YADAV
R/O. WARD NO.6
UKILPATTY
PARGONA BARAKPAR
MOUZA SILCHAR TOWN
DIST. CACHAR
ASSAM
PIN-788001

Advocate for the Petitioners : Mr. A. Bhattacharjee, Advocate

Advocate for the Respondents : Mr. J. Handique, Govt. Advocate
Mr. S. Dutta, Sr. Advocate
Mr. D. K. Mishra, Sr. Advocate
Mr. B. Prasad, Advocate

BEFORE

HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 16.08.2024

Date of Judgment : 16.08.2024

JUDGMENT AND ORDER (ORAL)

Heard Mr. A. Bhattacharjee, the learned counsel appearing on behalf of the petitioners. Mr. J. Handique, the learned counsel appears on behalf of the respondent Nos.1 & 2; Mr. S. Dutta, the learned senior counsel appears on behalf of the Executive Officer, Silchar Municipal Board and Mr. D. K. Mishra, the learned senior counsel assisted by Mr. B. Prasad, the learned counsel appears on behalf of the private respondents.

2. This Court heard the instant writ petition at length on 13.08.2024

and passed the following order which is reproduced herein under:-

“13.08.2024

Heard Mr. G. N. Sahewalla, the learned Senior Counsel assisted by Ms. G. Dugar, the learned counsel appearing on behalf of the petitioners. Mr. J. Handique, the learned counsel appears on behalf of the respondent Nos. 1 & 2; Mr. S. Dutta, the learned Senior Counsel appears on behalf of the respondent Nos. 3 & 4; Mr. D.K. Mishra, the learned Senior Counsel assisted by Mr. B. Prasad, the learned counsel appears on behalf of the private respondents.

2. The issue involved in the instant writ petition pertains to as to whether the Executive Officer who has duly appointed by the Government on account of the dissolution of the Silchar Municipal Board can exercise the power under Section 177 or 321 of the Assam Municipal Act, 1956.

3. The learned Senior Counsel appearing on behalf of the petitioners submitted that after the Chairman of the Silchar Municipal Board having passed an order on 27.05.2019 thereby directing the private respondents to demolish the unauthorized construction, the Executive Officer of the Silchar Municipal Board could not have exercised the power to modify the order dated 27.05.2019. He submits that the power so exercised by the Executive Officer is a power of review which is not envisaged under the Assam Municipal Act, 1956.

4. On the other hand, Mr. D.K. Mishra, the learned Senior Counsel appearing on behalf of the private respondents submitted that this Court needs to take note of that the order impugned in the instant proceedings which has been passed at a time when the Silchar Municipal Board has been dissolved and an Executive Officer has been appointed. The learned Senior Counsel submitted that in terms with Section 299(b) of the Act of 1956, all powers of the Board whether at the meeting or otherwise shall during period of the dissolution is to be exercised by the Executive Officer or such person as the State Government may direct till the Commissioner and Chairman are elected. He therefore

submitted that the petitioners herein pursuant to the order dated 27.05.2019 submitted an Appeal to the Deputy Commissioner, Silchar who endorsed the said appeal to the Executive Officer of the Silchar, Municipal Board. He therefore submits that a reading of Section 321 of the Act of 1956 shows that an Appeal lies to the Board and reading conjointly with Section 299(b) of the Act of 1956, the Executive Officer is duly empowered to exercise the powers of the Appellate Authority.

5. *Mr. S. Dutta, the learned Senior Counsel appearing on behalf of the Silchar Municipal Board submitted that this is not a case of appeal under Section 321 of Act of 1956 but it is a case where the Executive Officer of the Silchar Municipal Board had exercised the power of the Board in terms with the second proviso to Section 177 of the Act of 1956, and as such, the said power could have been very well exercised by the Executive Officer in terms with Section 299(b) of the Act of 1956.*

6. *This Court upon hearing the learned Counsels appearing on behalf of the parties finds that a very pertinent aspect which requires to be taken note of while construing the powers under Section 299(b) of the Act of 1956 inasmuch as the power of the Board can be exercised by the Executive Officer or the officer duly empowered by the State Government only with the prior approval of the Director of Municipal Administration. As from the materials on record, it is not clear as to whether the Executive Officer while passing the impugned order dated 11.12.2020 had exercised the power with the due approval of the Director of Municipal Administration which touches on the power of the Executive Officer in passing the impugned order, this Court directs both the learned counsels appearing on behalf of the respondent Nos. 1 & 2 as well as the respondent No. 3 & 4 to obtain instructions as to whether the order dated 11.12.2020 had the approval of the Director of Municipal administration.*

7. *List the matter on 16.08.2024 at 2 p.m."*

3. From the order reproduced herein above, it would be seen that this

Court taking into account the proviso to Section 299 (b) of the Assam Municipal Act, 1956 sought for instructions as to whether the Executive Officer while passing the impugned order dated 11.12.2020 had exercised powers with the due approval of the Director of Municipal Administration.

4. Today, Mr. J. Handique, the learned counsel appearing on behalf of the respondent Nos.1 & 2 placed before this Court an instruction issued by the Director of Municipal Administration dated 16.08.2024. From the said instruction, it transpires that the Directorate of Municipal Administration did not receive any proposal seeking approval from the Director, Municipal Administration prior to passing of the order dated 11.12.2020. In addition to that, it is also mentioned that no approval was issued to the Silchar Municipal Board in respect to the impugned order dated the 11.12.2020. The said instruction is kept on record and marked with the letter "X". From the said instructions, it is therefore clear that the impugned order dated 11.12.2020 passed by the Executive Officer is ex-facie without authority and jurisdiction. The reasons for the said observation can be seen deduced from a reading of Section 321 as well as Section 177 of the Act of 1956.

5. In the instant case Mr. S. Dutta, the learned senior counsel appearing on behalf of the Executive Officer submitted that the private respondents have filed an application in terms with second Proviso to Section 177 of the Act of 1956. In terms with the said Proviso, the Board at any meeting may instead of requiring alteration or demolition of any such building, accept by way of composition such sum as it may deem reasonable. Therefore, the power which was exercised by the Executive Officer in passing the impugned order dated the 11.12.2020 has to be

construed as a power exercised in terms with Section 299 (b) of the Act of 1956, that too of the Board. However, as it is apparent from the communication kept on record and marked with the letter "X", no prior approval was taken.

6. On the other hand, Mr. D. K. Mishra, the learned senior counsel appearing on behalf of the private respondents submitted that the power was exercised in terms with Section 321 of the Act of 1956. A reading of Section 321 of the Act of 1956 shows that the said provision relates to Appeals from order of the Board. However, a perusal of Section 299 (b) of the Act of 1996 shows that Executive Officer or any person duly authorized by the State Government would exercise the power of the Board. Therefore the Executive Officer who was exercising the powers of the Board could not have exercised the powers under Section 321 of the Act of 1956. It is the opinion of this Court that the Appellate powers under Section 321 of the Act of 1956 cannot be exercised by the Executive Officer in as much as if it is held that the Executive Officer is empowered to exercise both the powers of the Board and the Appellate powers against orders of the Board, it would render the Appellate provision of Section 321 of the Act of 1956 redundant. Under such circumstances, this Court opines that the order dated 11.12.2020 is an order in relation to the second proviso to Section 177 of the Act of 1956 exercised by the Executive Officer in terms with Section 299 (b) of the said Act.

7. Accordingly, the impugned order dated the 11.12.2020 is set aside and quashed.

8. This Court further takes note of that in view of the setting aside of the order dated 11.12.2020 on the ground of passing the order with due

authority, the consideration of the application filed by the private respondents by the Executive Officer would be required. This power can only be exercised by the Executive Officer subject to the prior approval of the Director of Municipal Administration in the present situation taking into account that the Board is still under dissolution. Under such circumstances, this Court directs the Executive Officer of the Silchar Municipal Board to decide the said application within the purview of Section 177 of the Act of 1956 so filed by the private respondents within a period of 4 (four) months from the date of the instant order.

9. It is made clear that the Executive Officer can exercise the power under the second Proviso to Section 177 of the Act of 1956 subject to prior approval of the Director of Municipal Administration. Under such circumstances, the Executive Officer shall prior to exercising the said powers has to initiate steps for seeking prior approval. The Director of Municipal Administration, i.e. the respondent No.2 upon request so made grant due approval after considering the facts of the case. It is however observed that the Executive Officer shall convey his decision on the application filed by the private respondents within 4 (four) months from today. The Respondent No.2 shall not keep the request seeking approval at hold and shall act so that the period mentioned in the instant order is complied with.

10. It is further directed that as the application filed by the private respondents is pending before the Executive Officer, Silchar Municipal Board, the order dated 25.07.2019 passed by the Chairman of the Silchar Municipal Board shall not be given effect to till the Executive Officer conveys the decision on the application filed by the private respondents to

the parties concerned. It is made clear that if any of the parties are aggrieved and there is no Board constituted after the decision on the application is conveyed, the parties would be at liberty to approach this Court under Article 226 of the Constitution.

11. With the above observations and directions, the instant writ petition stands disposed of.

12. Before parting with the record, this Court however makes it clear that this Court has only adjudicated on the legality and validity of the order dated 11.12.2020 passed by the Executive Officer and the observations made herein shall not be construed that this Court had decided as regards the right, title, interest and possession in respect to the land and building in question.

JUDGE

Comparing Assistant