

GAHC010012512010



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

Case No. : RSA/24/2010

RAVI GOYAL and 4 ORS,
S/O LT. JAGADISH PD. GOYAL, R/O GANDHI CHUK, KALIAPANI, DOOM
DOOMA, P.O. and P.S. DOOM DOOMA, DIST. TINSUKIA, ASSAM.

2: SMT. REKHA AGARWAL

D/O LT. JAGADISH PD. GOYAL
W/O SRI DINESH AGARWAL
R/O RAILWAY COLONY
GOURI KUNJ BUILDING
NAUPUKHURI
P.O.
P.S. and DIST. TINSUKIA
ASSAM.

3: SMT. RENU RASIWASIA

D/O LT. JAGADISH PD. GOYAL W/O SRI KAILASH RASIWASIA
R/O ISHA BUILDING
2ND FLOOR
LAL BUNGLOW
P.O.
P.S. and DIST. TINSUKIA
ASSAM.

4: SMT. RITA GUPTA

D/O LT. JAGADISH PD. GOYAL
W/O SRI RAJESH GUPTA
R/O SRI PURIA
NEAR NAMAK GODOWN
P.O. SRI PURIA
P.O.
P.S. and DIST. TINSUKIA

ASSAM.

5: SMT. RANJITA AGARWAL

D/O LT. JAGADISH PD. GOYAL
W/O SRI PAWAN AGARWAL
R/O RAJEN DWARA BUILDING
BADA BAZAR
P.O.
P.S. and DIST. TINSUKIA
ASSAM

VERSUS

THE CHAIRMAN,
TINSUKIA DEVELOPMENT AUTHORITY, P.O. , P.S. and DIST. TINSUKIA,
ASSAM.

Linked Case : RSA/23/2010

SMT LAKSHMI DEVI and ORS

WIDOW OF LATE BIJOY KUMAR AGARWALLA. ON THE DEATH OF BIJOY
KUMAR AGARWALLA HIS HEIRS.

2: MISS PUNA AGARWALLA

3: BINAY AGARWALLA

4: SUSBHAM AGARWALLA

NO. 2 IS THE DAUGHTER AND NOS 3 AND 4 ARE THE SONS OF LATE BIJOY
KUMAR AGARWALLA
ALL RESIDENTS OF CHALIHA NAGAR
TINSUKIA
P.O. /P.S./ DIST. TINSUKIA
ASSAM.
VERSUS

THE CHAIRMAN

TINSUKIA DEVELOPMENT AUTHORITY
P.O.
P.S. and DIST. TINSUKIA
ASSAM.

Linked Case : RSA/22/2010

RAM NIWAS PAREEK

S/O SRI SATYANARAYAN PAREEK
R/O T.D.A. BUILDING NO. 02
UNIT NO. 07
FIRST FLOOR
CHALIHA NAGAR
TINSUKIA TOWN
P.O.
P.S. and DIST. TINSUKIA
ASSAM.

VERSUS

THE CHAIRMAN

TINSUKIA DEVELOPMENT AUTHORITY
P.O.
P.S. and DIST. TINSUKIA
ASSAM.

Advocate for the Appellants : Mr. G. Rahul, Advocate

Advocate for the Respondent : Mr. A. K. Gupta, Advocate

BEFORE

HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 18.06.2024

Date of Judgment : 18.06.2024

JUDGMENT AND ORDER (ORAL)

All the three Second Appeals are taken up for disposal by this common judgment and order.

2. I have heard Mr. G. Rahul, the learned counsel for the appellants and Mr. A. K. Gupta, the learned counsel appearing on behalf of the respondent.

3. It is relevant to take note of that in RSA No.23/2010 and RSA No.24/2010 are appeals against the common judgment and decree passed by the learned Trial Court as well as the First Appellate Court. The judgment and decree impugned in RSA No.22/2010 arises out of a separate judgment and decree but taking into account the similarities of facts of all the three Appeals, all the three Appeals are taken up together for disposal. It is also relevant to take note of that in all the three Appeals vide the order dated 26.02.2010, this Court had framed the same set of substantial questions of law which are mentioned herein under:-

- (i) *Whether the suit of the plaintiff can be held to be not maintainable for not impleading the Tinsukia Development Authority as a party defendant in the suit when the Chairman of the Tinsukia Development Authority is a party defendant?*
- (ii) *Whether the suit can be dismissed on the ground of non-joinder of necessary parties in the absence of any pleadings in the written statement?*
- (iii) *Whether the suit of the plaintiff can be dismissed on the ground of non-issuance of notice under Section 60 (2) of the Assam Town and Country Planning Act, 1959?*

4. The common facts in all the three Appeals are that the appellants herein have been in occupation of rented premises which have been specifically described in Schedules to their plaints. Some time in the month of March, 2001, the appellants received letters from the Chairman of Tinsukia Development Authority wherein it was informed that the Tinsukia Development Authority proposed to sell out the rented premises on ownership basis and it was mentioned that preference would be given to the present occupants. Further, vide the said notice, it was informed to the appellants along with the others to confirm the acceptance to the said proposal. By the said letter, it was further intimated that if the appellants failed to confirm their willingness to purchase the suit premises, the offer would be made to others. The value of the suit premises in all the three cases was Rs.2,70,000/-. From the further perusal of the facts, it reveals that the appellants have duly made payments from time to time and there have been various correspondences exchanged between the appellants as well as the respondent. On 16.06.2003, the appellants received letters from the respondent wherein it has withdrawn the earlier offer for sale and directed the appellants to appear before the respondent for the purpose of signing the new tenancy agreement w.e.f.

1st of July, 2003. Under such circumstances, a legal notice was issued on 15.07.2003 in all the three cases to the respondent demanding completion of the sale of the suit premises within 2 months from the date of receipt of the legal notice. To the said legal notice, the appellants have also received replies wherein it has been categorically mentioned that there was no agreement for sale and also stated that the respondent would not execute the Deed of Sale. It is under such circumstances, the three individual suits were filed by the appellants herein. In the case of RSA No.22/2010, the Title Suit of the appellant was registered and numbered as Title Suit No.38/2004. In the case of appellants in the case of RSA No.23/2010, the Title Suit was registered and numbered as Title Suit No.36/2004 and in the case of the appellants in RSA No.24/2010, the Title Suit was registered and numbered as Title Suit No.35/2004. In the said suits, the appellants as plaintiffs sought for a decree for execution of the Sale Deed of the suit premises in favour of the plaintiffs by the defendant and alternatively for a decree for recovery of an amount of money along with the interest. The respondent herein as defendant filed its written statements in all the three cases raising various pleas on the maintainability of the suits and had also denied that the plaintiffs/appellants had any right to seek specific performance of the agreement. The plea of non-joinder was taken but it was only in respect to the State of Assam.

5. On the basis of the pleadings, the learned Trial Court had framed 8 common Issues in Title Suit No.35/2004 and Title Suit No.36/2004 which have resulted in the RSA No.23/2010, RSA No.24/2010. In Title Suit No.38/2004, there were 9 Issues framed. It is however very pertinent to take note of the substantial questions of law so formulated by this Court that an Issue was framed as regards the suit being bad for non-joinder of the State of Assam as a necessary party in the plaints in all the three suits. In Title Suit No.35/2004 and Title Suit No.36/2004, the Issue No.1 pertains to as whether the suit was maintainable. However, in Title Suit No.38/2004, the Issue No.3 was as to whether the suit was bad under the provisions of Section 9 of Order VII Rule 11 (d) read with Section 151 of the Code of Civil Procedure, 1908 as well as Sections 60 & 63 of the Assam Town and Country Planning Act, 1959 (for short, 'the Act of 1959').

6. The learned Court of the Civil Judge at Tinsukia vide the judgment and decree dated 10.05.2007 decreed the Title Suit No.38/2004 thereby holding that the plaintiff was entitled to a decree for specific performance of contract through execution of Sale Deed in respect to the suit premises and cost of the suit. It was also stated that failure on the part of the defendant to execute the Sale Deed, the plaintiff would be entitled to get Sale Deed executed through the Court in due course. In addition to that, the plaintiff was also asked to deposit the balance consideration money as per the Sale Agreement to the Court within a period of 15 days only through Treasury Challan and it was categorically mentioned that in the circumstance the plaintiff failed to deposit the said amount, the judgment and decree shall stand recalled and the suit shall be dismissed.

7. In Title Suit No.35/2004 and Title Suit No.36/2004, the learned Trial Court passed the common judgment and decree dated 27.03.2007. The decree which was passed is similar to the decree which has been passed in Title Suit No.38/2004.

8. Being aggrieved, three Appeals were preferred by the respondent which are Title Appeal No.8/2007, Title Appeal No.9/2007 and Title Appeal No.13/2007. Title Appeal No.8/2007 and Title Appeal No.9/2007 were disposed of by a common judgment and decree passed by the learned First Appellate Court dated 06.07.2009. In doing so, the learned First Appellate Court decided all the Issues in favour of the plaintiffs except Issue No.1 whereby the learned First Appellate Court dismissed the suit on the ground of non-maintainability in view of not impleading Tinsukia Development Authority as a party as well as for non-compliance to the provisions of Section 60 (2) (a) of the Act of 1959. The Title Appeal No.13/2007 was also allowed by dismissing the suit on the ground that the plaintiff did not institute the suit against Tinsukia Development Authority as well as did not comply with the provisions of Section 60 (2) (a) of the Act of 1959. It is against that, the instant three Appeals are before this Court.

9. This Court has duly heard Mr. G. Rahul, the learned counsel for the appellants and Mr. A. K. Gupta, the learned counsel appearing on behalf of the respondent and given due consideration to their respective submissions.

10. The first substantial question of law which has been formulated by this Court is as to whether the suits filed by the plaintiffs would be maintainable without Tinsukia Development Authority as a party defendant in the suits when the Chairman of Tinsukia Development Authority is a party defendant. This Court finds it very relevant to take note of Chapter IIA of the Act of 1959 which stipulates the constitution of the Development Authority. The said Chapter has various provisions from Section 8A to 8H. The Chairman is to be appointed by the State Government. It further stipulates that the said Authority, i.e. Tinsukia Development Authority would comprise of various members as stipulated in Section 8B (1). Section 8E (e) stipulated the power of the Chairman. It mentions that the Chairman shall, for the transaction of the business connected with the Act of 1959 exercises all the powers vested by the said Act of 1959 in the Authority. The proviso to the said Section stipulates that the Chairman shall not act in opposition to or in contravention of any order of the Authority at the meeting, or exercise any power which is directed to be exercised by the Authority at the meeting. Taking into account that the dispute involved as regards disposal of the property belonging to the authority, it would be relevant to mention about Section 72 of the Act of 1959 which stipulates that the Authority shall be competent to make any agreement with any person in respect to any matter, which is to be provided for in the scheme and unless it is otherwise expressly provided therein, such agreement shall take effect on or after the day on which the scheme comes into force.

11. This Court finds it relevant to take note of Section 59 of the Act of 1959 which stipulates that the Authority shall have the power to institute, defend or withdraw from legal proceedings under the Act. A perusal of the Act of 1959 does not show that the Authority on the basis of the provisions of the Act of 1959 would be represented by the Chairman sans any authority being given. Under such circumstances, in the opinion of this Court, the learned First Appellate Court was therefore justified in holding that the suits were not maintainable without the suits being instituted against the Tinsukia Development Authority.

12. The above aspect therefore touches on the second substantial question of law so formulated as to whether the suits can be dismissed on the ground of non-joinder of

necessary parties in the absence of any pleadings in the written statement. The said substantial question of law so formulated in the opinion of this Court is not involved in the instant Appeals on the ground that the suits so filed were not maintainable not on the ground of non-joinder of necessary parties, but on the ground that the suits were not instituted against the proper Authority. It is therefore seen that the learned First Appellate Court therefore rightly decided that the suits were not maintainable without Tinsukia Development Authority in as much as Tinsukia Development Authority as per the Act of 1959 only has the right to enter into agreement with any person and the Authority can sue and defend by itself.

13. The third substantial question of law so formulated is as to whether the suits of the plaintiffs can be dismissed on the ground of non-issuance of notice under Section 60 (2) of the Act of 1959 is not a substantial question of law involved in the instant Appeals in as much as the learned First Appellate Court dismissed the suits as being not maintainable in view of non-availability of the sanction from the State of Assam as is required under Section 60(2) (a) of the Act of 1959.

14. Consequently, this Court therefore finds no substantial question of law involved in the instant three Appeals for which all the three Appeals stand dismissed.

15. In view of the special facts of the case, this Court is not inclined to impose costs.

16. Return the LCRs.

JUDGE

Comparing Assistant