

WP(C) 2752/2015

BEFORE

HON'BLE MR. JUSTICE M.R.PATHAK

Heard Mr. K.N. Choudhury, learned Sr. counsel assisted by Mr. J. Patowary, learned counsel appearing for the petitioner. Also heard Ms. M. Hazarika, learned Sr. counsel assisted by Ms. E. Bharali appearing for the respondent Nos. 2 & 3 and Mr. N. Upadhyay, learned Govt. Advocate appearing for the respondent No.1.

The respondent No.3, CEO, GMDA on 24-02-2015 (Annexure-1) issued a Notice under Section 87 of the GMDA Act to the petitioner asking him to show cause within ten days from receipt of the said notice, as to why his Assam Type house, constructed over the land within GMDA area covered by Master Plan & Zoning Regulation, without the requisite approval of GMDA, contravening the provisions of Sections 24 & 25 of the GMDA Act should not be demolished under Section 88 (1) or seal the premises of unauthorised construction in which such work is being carried out or completed under Section 88(4). By the said Notice dated 24.02.2015, the petitioner was further informed that unless his reply reaches the office of the issuing authority within five days of service of said Notice, the GMDA will be free to go ahead with demolition of unapproved construction being carried out/completed by him or seal the premises of such unauthorised construction. Accordingly, petitioner filed his reply on 26-02-2015.

However, the respondent No.3, CEO, GMDA by his order dated 30.04.2015 (Annexure-3) rejected the show cause reply of the petitioner holding that his unauthorised construction of the Assam Type house is within Eco Sensitive Zone of Guwahati Master Plan notified on 07-07-2009, which is in force and accordingly directed him to vacate or demolish his said Assam Type house within five days from the date of receipt of the order intimating him that failure on his part to comply with the same, GMDA will be free to proceed with demolition or to seal the said unauthorised Assam Type house on its own, without giving any further intimation and expenses thereof shall be recovered from him and that the authority shall not be liable for payment of any compensation for such loss/damages of the petitioner.

Being aggrieved, the petitioner has filed the present petition.

Mr. Choudhury, learned Sr. counsel appearing on behalf of the petitioner placing reliance in the judgment of the Hon'ble Apex Court in the case of Biecco Lawrie Limited and another vs. State of West Bengal and another, reported in (2009) 10 SCC 32, wherein it is settled that a notice, to be adequate, must contain, amongst others - a statement of specific charges which a person has to meet and in the present case respondents GMDA did not issue any notice under Section 88 of the GMDA Act, 1985 as amended and the petitioner was not made known by the said order dated 30.04.2015 that his land in question is located within Eco Sensitive Zone of Guwahati Master Plan of July, 2009.

From the Notice dated 24-02-2015 (Annexure-1) under Section 87 of the GMDA Act issued to the petitioner, it is seen that GMDA has not informed him that the Assam Type house that he constructed is within the Eco Sensitive Zone of Guwahati and the same has been informed to the petitioner only by the impugned order dated 30-04-2015 (Annexure-3).

Issue notice, returnable by 25-5-2015.

As Mr. Upadhyay has accepted notice for the respondent No.1 and Ms. E. Bharali has accepted notice for the respondents 2 and 3, no formal notice need be issued. However, extra copies of the writ petition be furnished to Mr. N. Upadhyay and Ms. E. Bharali during the course of the day.

Till the returnable date (25-05-2015), the impugned order dated 30.04.2015 (Annexure-3 to the petition) issued by the GMDA with regard to demolition of the house of the petitioner shall be kept in abeyance.