

GAHC010015402023



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

Case No. : WP(C)/392/2023

RANJU AGARWAL AND ANR.
W/O- SRI RAM PRAKASH AGARWAL (JINDAL), R/O- CHIRWAPATTY ROAD,
NEAR DEVI MANDIR, P.O., P.S. AND DIST.- TINSUKIA, ASSAM, PIN- 786125

2: RAM PRAKASH AGARWAL (JINDAL)
S/O- LATE HANUMAN PRASAD AGARWAL (JINDAL)
R/O- CHIRWAPATTY ROAD
NEAR DEVI MANDIR
P.O.
P.S. AND DIST.- TINSUKIA
ASSAM
PIN- 78612

VERSUS

THE STATE OF ASSAM AND 8 ORS
REP. BY THE SECY. TO THE GOVT. OF ASSAM, TOWN AND COUNTRY
PLANNING DEPTT., DISPUR, GHY-06

2:THE DIRECTOR
MUNICIPAL ADMINISTRATION
ASSAM
DISPUR
GHY-06

3:THE EXECUTIVE OFFICER
TINSUKIA MUNICIPAL BOARD
P.O.
P.S. AND DIST.- TINSUKIA
ASSAM
PIN- 786125

4:M/S DAYAL CONSTRUCTIONS
REP. BY SRI RAJENDRA PRASAD CHOUDHURY

HAVING OFFICE AT C/O. M/S DAYAL ENTERPRISES
A.T.ROAD (MAKUM ROAD)
NEAR TOKRIGOLA
P.O.
P.S. AND DIST.- TINSUKIA
ASSAM
PIN- 786125

5:RAJENDRA PRASAD CHOUDHURY
S/O- LT. SATYANARAYAN CHOUDHURY
R/O- CHALIHA NAGAR
NEAR TINSUKIA DEVELOPMENT OFFICE
P.O.
P.S. AND DIST.- TINSUKIA
ASSAM
PIN- 786125 AND ALSO HAVING THEIR OFFICE ADDRESS AT C/O. M/S
DAYAL ENTERPRISES
A.T.ROAD (MAKUM ROAD)
NEAR TOKRIGOLA
P.O.
P.S. AND DIST.- TINSUKIA
ASSAM
PIN- 786125

6:RAVI CHOUDHURY
S/O- LT. SATYANARAYAN CHOUDHURY
R/O- CHALIHA NAGAR
NEAR TINSUKIA DEVELOPMENT OFFICE
P.O.
P.S. AND DIST.- TINSUKIA
ASSAM
PIN- 786125 AND ALSO HAVING THEIR OFFICE ADDRESS AT C/O. M/S
DAYAL ENTERPRISES
A.T.ROAD (MAKUM ROAD)
NEAR TOKRIGOLA
P.O.
P.S. AND DIST.- TINSUKIA
ASSAM
PIN- 786125

7:VISHAL CHOUDHURY
S/O- SRI RAJENDRA PRASAD CHOUDHURY
R/O- CHALIHA NAGAR
NEAR TINSUKIA DEVELOPMENT OFFICE
P.O.
P.S. AND DIST.- TINSUKIA
ASSAM
PIN- 786125 AND ALSO HAVING THEIR OFFICE ADDRESS AT C/O. M/S

DAYAL ENTERPRISES
A.T.ROAD (MAKUM ROAD)
NEAR TOKRIGOLA
P.O.
P.S. AND DIST.- TINSUKIA
ASSAM
PIN- 786125

8:SHASHI CHOUDHURY
S/O- SRI RAJENDRA PRASAD CHOUDHURY
R/O- SHAKSHI MOTORS
CHIRWAPATTY ROAD
P.O.
P.S. AND DIST.- TINSUKIA
ASSAM

9:SWAPNA GARODIA
W/O- SANJAY GARODIA
C/O GARODIA AUTO MOBILES
MORAN TOWN
P.O. AND P.S. MORAN
DIST.- SIVASAGAR
ASSAM
PIN- 78564

Advocate for the Petitioner : MR. BHASKAR DUTTA, SENIOR ADVOCATE

Advocate for the Respondent : SR. GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 25.01.2023

Heard Mr. B. Dutta, learned Senior Counsel assisted by Mr. S. Deka, learned counsel for the petitioners and Mr. M. Chetia, learned counsel for the respondent nos. 1 & 2.

2. The case projected in the writ petition, in a nutshell, is that one [Late] Gayatri Devi Choudhury is the predecessor in interest of the respondent nos. 4 – 9. A permission for house

construction for one RCC 5 storied [G+4] commercial building was granted by the respondent Tinsukia Municipal Board on 12.05.2014 in the name of [Late] Gayatri Dechi Choudhury, who expired on 07.11.2015. The said permission stood renewed on 05.02.2016 upto 12.05.2018 on the basis of an application purportedly received from Gayatri Devi Choudhury on 15.12.2015. When the construction pursuant to the said permission was undertaken, the petitioners who are neighbours of the plot of land where the said building was being constructed, on the Southern side, found apparent violations in the construction, more particularly, in violations of the provisions contained in Rule 67[3] of the Assam Notified Urban Areas [Other than Guwahati] Building Rules, 2014 [the Building Rules, 2014]. When representation submitted by the petitioners did not bring effective action from the end of respondent Municipal Board authorities, the petitioners preferred a writ petition, W.P.[C] no. 418/2018. The writ petition was allowed by a judgment and order dated 22.05.2018 with the following observations : -

“13. In view of the discussions and findings above, this Court interferes with the Building Permission/Renewal Permission made in the name Gayatri Devi Choudhury by making a declaration that the same can be construed to be a valid permission only to the extent of the height of 11.5 meters of the Building in question and not to any further height. Illegality being incurable, the Tinsukia Municipal Board shall now take appropriate steps to ensure strict compliance of Rule 67(3) of the Building Rules, 2014 and in this respect may take appropriate steps by way of causing demolition to that part of the Building in question which offends and is in violation of the mandate of the said Rule 67(3) of the Building Rules, 2014. The nature's gift of sunlight and air being integral to human existence, the same cannot be replaced by compounding a violation by means of monetary consideration. The Building in question has to be cut to size to bring it within the statutory framework/dimension of Rule 67(3) of the Building Rules, 2014 by doing away with any violation thereof.”

2.1. Aggrieved thereby, the respondent nos. 4 – 9 assailed by the same by way of an intra-court appeal, Writ Appeal no. 188/2018. But the writ petition was dismissed by a judgment and order dated 22.04.2019 finding the writ appeal devoid of merit. The respondent nos. 4 –

9 had thereafter, preferred a review application, Review Petition no. 129/2019, which was also dismissed by an order dated 07.03.2022 finding no scope for interference in the review jurisdiction.

3. Mr. Dutta, learned Senior Counsel for the petitioner, by referring to the photographs annexed at Page nos. 103 to 105 of the case papers, has submitted that the respondent nos. 4 – 9 are still undertaking construction of the said building, in respect of which, there was no renewal since 12.05.2018 and such construction is in clear defiance of the direction of this Court. By referring to the letter dated 21.01.2023 of the respondent no. 3, he has submitted that the said letter was merely dispatched as a formality and it was in order to save his skin, without any effective action taken by the said authority despite elapse of more than 9 [nine] months from the dismissal of the review petition on 07.03.2022.

4. Issue notice of motion. The notice is made returnable in 4 [four] weeks.

5. As Mr. Chetia has appeared and accepted notices on behalf of the respondent nos. 1 & 2, no formal notices need to be issued in respect of the said respondents. The learned counsel for the petitioner shall serve requisite nos. of extra copies of the writ petition along with the annexures, to Mr. Chetia within 3 [three] working days from today.

6. The petitioner shall take steps for service of notices upon the respondent nos. 3 – 9 by way of registered post with A/D within 2 [two] working days.

7. I have gone through the statements and averments made in the writ petition. Having regard to the directions made in the judgment and order dated 22.05.2018 passed in the writ petition, W.P.[C] no. 418/2018; the judgment and order dated 22.04.2018 passed in the writ appeal, Writ Appeal no. 188/2018; and the order dated 07.03.2022 passed in the review petition, Review Petition no. 129/2019 and the statement made that the respondent nos. 4 – 9 are still continuing with the construction works of the multistoried building, it is ordered that till the returnable date, the respondent no. 3 shall ensure that no construction activities are done by the respondent nos. 4 – 9 in respect of the building located in the plot of land,

covered by Dag no. 829 of Periodic Patta no. 450, located at Chirwapatty Road, Near Devi Mandir, Tinsukia Town Sheet no. 26, Ward no. 6 under Tinsukia Municipal Board.

JUDGE

Comparing Assistant