

GAHC010046082023



2026:GAU-AS:2886

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

Case No. : WP(C)/1212/2023

M/S DAYAL CONSTRUCTIONS AND ANR
HAVING OFFICE AT M/S DAYAL ENTERPRISES A T ROAD MAKUM ROAD
NEAR TOKRIGOLA P.O. P.S AND DIST. TINSUKIA ASSAM PIN 786125 REP
.BY THE PETITIONER NO. 2 SRI RAVI CHOUDHURY

2: RAVI CHOUDHURY
S/O RAJENDRA PRASAD CHOUDHURY R/O CHALIHA NAGAR NEAR TDA
OFFICE P.O P.S AND DIST. TINSUKIA ASSAM PIN 78612

VERSUS

THE STATE OF ASSAM AND 7 ORS
REP. BY THE SEC. TO THE GOVT. OF ASSAM TOWN AND COUNTRY
PLANNING DEPTT. DISPUR GUWAHATI ASSAM 781006

2:THE TINSUKIA MUNICIPAL BOARD
GNB ROAD TINSUKIA ASSAM 786125

3:THE CHAIRMAN
TINSUKIA MUNICIPAL BOARD GNB ROAD TINSUKIA ASSAM 786125

4:THE EXECUTIVE OFFICER
TINSUKIA MUNICIPAL BOARD GNB ROAD TINSUKIA ASSAM 786125

5:THE TOWN PLANNER
TINSUKIA MUNICIPAL BOARD GNB ROAD TINSUKIA ASSAM 786125

6:THE DEPUTY COMMISSIONER
DIST. TINSUKIA ASSAM 786125

7:RANJU AGARWAL
W/O RAM PRAKASH AGARWAL (JINDAL) R/O CHIRWAPATTY ROAD NEAR
DEVI MANDIR P.O P.S AND DIST. TINSUKIA ASSAM 786125

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

Advocate for the Petitioner : MR. B D KONWAR SR. ADV., MR H AGARWAL,MR J SINGH

Advocate for the Respondent : GA, ASSAM, MR. S BORTHAKUR (R-2 TO 5),MR. S S ROY(R-2 TO 5),MR. BHASKAR DUTTA, SENIOR ADVOCATE (r-7,8),MR J DAS (r-7,8),MR. SAILENDRA DEKA (r-7,8)

Linked Case : 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- 786125
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- 785640

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

For the Petitioners(s) in WP(C)/1212/2023 : Mr. B.D. Konwar, Sr. Advocate
: Mr. H. Agarwal, Advocate

For the Petitioners(s) in WP(C)/392/2023 : Mr. B. Dutta, Sr. Advocate
: Mr. S. Deka, Advocate

For the Respondents(s) : Mr. N. Das, Govt. Advocate
: Mr. S.S. Roy, Standing Counsel

Date on which judgment was reserved : **NA**
Date of pronouncement of judgment : **19.02.2026**
Whether the pronouncement is of the
Operative part of the judgment? : **NA**
Whether the full judgment has been
pronounced? : **Yes**

JUDGMENT AND ORDER (ORAL)

Heard Mr. B.D. Konwar, the learned Senior Counsel assisted by Mr. H. Agarwal, the learned counsel appearing on behalf of the Petitioners in WP(C) No. 1212/2023 and Mr. B. Dutta, the learned Senior Counsel assisted by Mr. S. Deka, the learned counsel appearing on behalf of the Petitioners in WP(C) No. 392/2023. I have also heard Mr. S.S. Roy, the learned Standing Counsel appearing on behalf of the Tinsukia Municipal Board and Mr. N. Das, the learned Government Advocate appearing on behalf of the State Respondents and District Administration.

2. Both the writ petitions are interrelated and as such, are taken up for disposal by this common judgment and order.

PREFACE:

3. The Petitioners in WP(C) No. 392/2023 are aggrieved by the inaction on the part of the Tinsukia Municipal Board in allowing the

Respondent Nos. 4 and 9 of the said writ petition to undertake further construction pursuant to the building construction permission (NOC) bearing No. TMB(Kha)2/Per/2012/530 dated 12.05.2014 and Renewal Permission bearing No. TMB(Tech)/AE/ Renewal/2014/3315 dated 05.02.2016 issued by the Tinsukia Municipal Board. The said Petitioners have also sought for a direction upon the Respondent No. 3 i.e. the Executive Officer of the Tinsukia Municipal Board to take appropriate actions against the Respondent Nos. 4 to 9 for violation of the provisions of the Assam Unified Building Construction (Regulation) Bye-Laws, 2022. The Petitioners have also sought for a relief thereby directing the Respondent Nos. 4 to 9 to dismantle the illegal construction, whatsoever carried out in violation of the Assam Notified Urban Areas (other than Guwahati) Building Rules, 2014 (for short, "the Rules of 2014") and the Assam Unified Building Construction (Regulation) Bye-Laws, 2022.

4. The Petitioners in WP(C) No. 1212/2023 are the Respondent Nos. 4 and 6 in WP(C) No. 392/2023. They have approached this Court by filing the instant writ petition seeking a direction upon the Executive Officer of the Tinsukia Municipal Board to carry out the physical verification of the building in question, to ascertain the height of the said building.

BRIEF FACTS:

5. For the purpose of convenience, this Court would refer to the parties in the present judgment in the manner they have been arrayed in WP(C) No. 392/2023.

6. The materials on record show that one Smt. Gayatri Devi Choudhury sought for permission from the Tinsukia Municipal Board for construction of a multi-storied commercial building. In the said application, the permissions sought for were for basement parking, ground floor, first floor, second floor, third floor, and the fourth floor. The said application was filed on 07.02.2014. The permission was granted by the Tinsukia Municipal Board on 12.05.2014 whereby the following areas were allowed to be constructed in the multi-storied building:

Basement (parking)- 4,567.25 square feet;

Ground floor- 4,923.73 square feet;

First floor- 4,923.73 square feet;

Second floor— 4,708.88 square feet;

Third floor— 4,708.88 square feet and

Fourth floor— 3,648.56 square feet.

7. From the approved plan which has been enclosed as Annexure-2 to the writ petition being WP(C) No. 392/2023, it is mentioned that the parking would be a basement parking. It further appears from Annexure-3 to the writ petition, that on 15.12.2015, an application was filed by the said Smt. Gayatri Devi Choudhury seeking renewal of the permission which was granted on 12.05.2014. The said application for renewal was accepted on 05.02.2016. It is apposite herein to observe that along with the renewal permission, the front elevations as well as various sections of the building were enclosed. It appears therefrom that the basement floor parking which was permitted was partially underground and partially above. From the said, it therefore appears that the parking which was permitted was a semi-basement parking.

8. At this stage, this Court finds it very pertinent to take note of the definition of "basement" as mentioned in Rule 2(12) of the Rules of 2014. The term "basement" or "cellar" has been defined to mean the lower storey of a building, below or partly below the ground level consisting of one or more levels. In other words, for the purpose of the Rules of 2014, a semi-basement floor would also be construed as a basement.

9. Proceeding further, it appears from the materials on record that the Petitioner No. 2 in WP(C) No. 392/2023 submitted a

representation before the Chairman, Tinsukia Municipal Board, complaining inter alia that the Respondent Nos. 4 to 9 were constructing the building which is in violation of Rule 67(3) of the Rules of 2014 without leaving proper setbacks towards the boundary wall of the Petitioners. The Petitioner No. 2 continued to approach the Tinsukia Municipal Board for taking action. However, as no actions were taken, the Petitioners in WP(C) No. 392/2023 approached this Court by filing a writ petition which was registered and numbered as WP(C) No. 418/2018. At the time when the writ petition being WP(C) No. 418/2018 was filed, the Respondent Nos. 4 to 9 had already constructed the basement, the ground floor, the first floor and the second floor. However, the third and the fourth floor of the building were not constructed.

10. The learned Coordinate Bench of this Court while issuing notice in the said writ petition passed prohibitory orders restraining the Respondent Nos. 4 to 9 to carry out any further construction.

11. The records of this case further show that the learned Coordinate Bench of this Court disposed of the said writ petition being WP(C) No. 418/2018 vide the judgment and order dated 22.05.2018. A perusal of the said judgment reveals that the learned Coordinate Bench of this Court on the basis of the permission which was granted to the said Smt. Gayatri Devi Choudhury and taking into account Rule

67 of the Rules of 2014 came to an opinion that the building in question which was being constructed by the Respondent Nos. 4 to 9 cannot exceed the height of 11.5 meters. At paragraph No. 6 of the said judgment, the learned Coordinate Bench of this Court observed that the construction of the building commenced in December, 2017, and as on the date on which the judgment was passed, the height of the building was 12.94 meters (42 ft. 6 inches) as against the approved total height of the building of 19.36 meters (63 ft. 6 inches).

At this stage, it is also pertinent to observe that in the said proceedings, a question arose as regards the *locus standi* of the petitioners to which the learned Coordinate Bench of this Court observed at paragraph No. 12 of the said judgment, that any construction invading the rights of the neighbour in furtherance to a plan sanctioned by the Municipality which is not in conformity with the Building regulations, cannot operate to non-suit the neighbour in maintaining a writ petition.

Paragraph No. 13 of the said judgment is the conclusion arrived at by the learned Coordinate Bench of this Court. What is relevant from a perusal of the said paragraph is that the learned Coordinate Bench opined that the building permission which was granted to Smt. Gayatri Devi Choudhury shall be construed to be a valid building permission to the extent of the height of 11.5 meters of the building

in question and not to any further height. This aspect is relevant taking into account the submissions so made by the learned Senior Counsel appearing on behalf of the Petitioners in the present petition being WP(C) No. 392/2023, that the Respondent Nos. 4 to 9, had constructed the said building without any permission. Paragraph No. 13 of the said judgment, being relevant, is reproduced herein under:

“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.”

12. The record reveals that the Respondent Nos. 4 to 9 preferred a Writ Appeal before the learned Division Bench of this Court challenging the judgment and order dated 22.05.2018 passed in WP(C) No. 418/2018. The said Writ Appeal was registered and numbered as Writ Appeal No. 188/2018. The learned Division Bench of this Court dismissed the said Writ Appeal vide the judgment and

order dated 22.04.2019 thereby confirming to the judgment of the learned Coordinate Bench of this Court dated 22.05.2018 and further observing that the construction of the building cannot be permitted beyond 11.5 meters in height, and the offending portion is liable to be demolished.

13. Before proceeding further, this Court finds it very pertinent to observe that the learned Coordinate Bench of this Court as well as the learned Division Bench of this Court in the aforesaid proceedings, only dealt with the question, as to what should be the height of the building, and not on the question, as to how the height of the building is to be measured. It was further opined by both the learned Coordinate Bench as well as by the learned Division Bench of this Court that the height of the building in question cannot exceed 11.5 meters.

14. Proceeding further, it appears from the records that the Petitioners herein submitted certain representations to the Chairperson of the Tinsukia Municipal Board. The resultant effect of such representations was a notice issued upon the Respondent No. 5 directing the Petitioners to bring the building to the size of 11.5 meters within a fortnight, failing which, steps for demolition would be taken. It further appears that the Respondent Nos. 4 to 9, thereupon preferred a review application against the judgment and order dated

22.04.2019 in Writ Appeal No. 188/2018. Vide an order dated 07.03.2022, the said review application was dismissed on the ground that there was no case made out for exercise of the review jurisdiction.

The issue as to what height the building can be raised therefore attained finality.

15. It is the further case of the Petitioners herein that in spite of the dismissal of the review application, the Executive Officer of the Tinsukia Municipal Board had not taken any steps, and as such, various representations were submitted on the ground that the Respondent Nos. 4 to 9, have not demolished the offending part of the building, and the Tinsukia Municipal Board has acted in collusion and in connivance with the Respondent Nos. 4 to 9. It is under such circumstances, the Petitioners herein have approached this Court by filing the present writ petition.

16. It is further pertinent to take note of that the Respondent No. 5 had submitted a representation to the Respondent No. 3 on 25.01.2023 informing that prior to the notice received on 21.01.2023, they had already dismantled 50% of the Roof Top above 11.5 meters and in that regard, various photographs were attached. The Respondent Nos. 4 to 9 vide the said representation sought that a physical verification be carried out. It is the case of the Respondent

Nos. 4 to 9 that on one hand no physical verification was carried out, but on the other hand, the Respondent No. 3 was pressurizing the Respondent Nos. 4 to 9 to demolish without taking into account that the Respondent Nos. 4 to 9 had already demolished the offending portion of the building. It is under such circumstances, the Respondent Nos. 4 to 9 filed their writ petition as Petitioners in WP(C) No. 1212/2023.

17. It is relevant to take into consideration that upon filing of WP(C) No. 1212/2023, the learned Coordinate Bench of this Court vide an order dated 03.03.2023, issued notice, and further passed certain interim directions to the effect that the operation of the order dated 06.02.2023 by which the Petitioners in WP(C) No. 1212/2023 were directed to demolish, would remain stayed. Further to that, in the order dated 03.03.2023 WP(C) No. 392/2023 was tagged along with WP(C) No. 1212/2023.

18. This Court has duly perused the records and it is seen that the parties have exchanged the pleadings in both the proceedings.

19. Briefly stated, it is the contention of the writ Petitioners in WP(C) No. 392/2023 that the Respondent Nos. 4 to 9 have not demolished the infringing portion of the building which is above 11.5 meters. Whereas, the case of the Petitioners in WP(C) No. 1212/2023 is that they have demolished the infringing portion and have asked the

Tinsukia Municipal Board to carry out the physical verification.

ISSUE BEFORE THIS COURT:

20. The issue therefore arises in both the proceedings is as to whether, pursuant to the judgment and order passed by the learned Coordinate Bench of this Court dated 22.05.2018 in WP(C) No. 418/2018 which was confirmed by the learned Division Bench of this Court in the judgment and order dated 22.04.2019 passed in Writ Appeal No. 188/2018, the building in question is above 11.5 meters as per the Rules of 2014 and what consequential directions are required to be passed?

INTERIM DIRECTIONS PASSED AND REPORT SUBMITTED:

21. Before analyzing and determining the above issue, it is pertinent to mention an important aspect. Both the writ petitions were taken up by this Court on 22.07.2024 and taking into account the issue involved, directions were issued upon the District Commissioner, Tinsukia to carry out the measurement of the height of the building in question on the basis of the observations passed in the said order. It was further observed that if the Office of the District Commissioner, Tinsukia did not have the infrastructure to carry out the measurement of the height of the building, the District Commissioner, Tinsukia, shall take the help of the concerned Executive Engineer, PWD of the Tinsukia Division to carry out the said measurement.

22. It is, however, very notable to take note of a very pertinent aspect of the matter, as is apparent from the order dated 22.07.2024 that the said order was passed on an assumption that there was no semi-basement parking or any floor kept only for parking and it was under such circumstances, this Court directed that the height of the building in question has to be calculated from the roof of the basement parking and it cannot exceed 11.5 meters, if calculated therefrom.

23. The materials on record would also show that pursuant to the said order an Interlocutory Application was filed by the Petitioners in WP(C) No. 1212/2023 to modify/alter the observations and directions contained in the order dated 22.07.2024 inasmuch as the said order was passed without taking into consideration Rule 2(15) of the Rules of 2014 which defines the term "building height" and further this Court had passed the said order on an assumption that there was no semi-basement or basement parking.

24. Be that as it may, in terms with the directions passed by this Court in the order dated 22.07.2024, the District Commissioner, Tinsukia had submitted a report on 09.08.2024 as provided on a measurement being carried out by the Junior Engineer, PWD Building, Tinsukia District Territorial Building Division. In the report so submitted by the Junior Engineer, PWD, District Territorial Building

Division, dated 08.08.2024, it was mentioned that the height of the building in question from the roof of the basement parking on 05.08.2024 was found as 10.87 meters above the roof of the basement parking. For the purpose of deciding the present proceedings, this Court finds it very pertinent to reproduce the contents of the said report submitted by the Junior Engineer, PWD, Tinsukia District Territorial Building Division, Tinsukia, herein under:

“With reference to the subject cited above and in accordance with the instructions received vide letter mentioned under reference, I have the honour to inform you that I, Shri. Siva Prasad Das, J.E., PWD, Tinsukia District Territorial Building Division, Tinsukia along with the Executive Officer, Tinsukia Municipal Board, Tinsukia visited an under construction building site on 05/08/2024 shown by the Executive Officer, Tinsukia Municipal Board, Tinsukia. Also, at the site, a copy of the approved drawing of the said building approved by the Tinsukia Municipal Board, Tinsukia in the name of owner Gaitri Devi Choudhury renewed on 12/05/2015 was furnished by the Executive Officer, Tinsukia Municipal Board, Tinsukia. Accordingly, in consultation with the Executive Officer, Tinsukia Municipal Board, Tinsukia the undersigned has taken measurement of the height of the said building calculating from the roof of the basement parking and the height of the said building as on 05/08/2024 is found as 10.87 meters above roof of basement parking.

In this regard, Geo tagged photograph of the said building is enclosed in this letter.

This is for favour of your kind information.”

25. It is also relevant to take note of that another Interlocutory Application was filed by the Petitioners in WP(C) No. 392/2023,

seeking for a vacation/modification of the order dated 25.01.2023 passed in WP(C) No. 392/2023.

**SUBMISSIONS MADE BY THE LEARNED COUNSELS
APPEARING ON BEHALF OF THE PARTIES:**

26. Mr. B. Dutta, the learned Senior Counsel appearing on behalf of the Writ Petitioners in WP(C) No. 392/2023, submitted that it is a finding of fact by the learned Coordinate Bench of this Court in the judgment and order dated 22.05.2018 in WP(C) No. 418/2018 that the height of the constructed building by the Respondent Nos. 4 to 9 was 12.94 meters. The learned Senior Counsel further submitted that if that be so, without there being any demolition being carried out by the Tinsukia Municipal Board or by the Petitioners in WP(C) No. 1212/2023, the judgment passed by the learned Coordinate Bench dated 22.05.2018 in WP(C) No. 418/2018 which have been confirmed by the learned Division Bench in the judgment dated 22.04.2019 in Writ Appeal No. 188/2018 with a specific direction for demolition have not yet been complied with in view of the collusion between the Petitioners in WP(C) No. 1212/2023 with the Tinsukia Municipal Board.

27. The learned Senior Counsel for the Petitioners in WP(C) No.392/2023 further referring to Clause 2(15) of the Rules of 2014 submitted that the said Clause defines the "building height".

Elaborating his submissions in respect to Clause 2(15) of the Rules of 2014, the learned Senior Counsel submitted that the building height has to be measured from the contiguous land upon which the building stands. The learned Senior Counsel further submitted that Rule 54(vii)(b) of the Rules of 2014 would only apply if the basement is constructed upon stilt and not otherwise. The learned Senior Counsel further submitted that the expression "stilt" as mentioned in Rule 54(vii)(b) of the Rules of 2014 are pillars upon which the building has to be constructed to avail the benefit of the said Rule. Drawing reference to the various photographs of the building, the learned Senior Counsel also submitted that the benefit of Rule 54(vii)(b) of the Rules of 2014 can only be permitted subject to provision of exclusive parking in the ground floor with special earthquake resistance measure.

28. Per contra, Mr. B.D. Konwar, the learned Senior Counsel appearing on behalf of the Petitioners in WP(C) No. 1212/2023 submitted that the building in question is being provided with basement parking. Referring to Rule 2(12) of the Rules of 2014, the learned Senior Counsel submitted that basement parking shall include semi-basement parking. Drawing reference to the approved drawings, the learned Senior Counsel submitted that for measuring the height of the building, a vertical height of 2.7 meters has to be omitted for the purpose of calculating the building height.

29. Mr. B. D. Konwar, the learned Senior Counsel further referring to Rule 59(1)(c) of the Rules of 2014 submitted that the minimum height of the basement should be 2.4 meters in height from the floor to the underside of the roof slab or ceiling and the Petitioners in WP(C) No. 1212/2023 have maintained that minimum height. The learned Senior Counsel further submitted that what was the issue involved in the earlier round of litigation was, as to whether, the building permission which was granted to Smt. Gayatri Devi Choudhury, was in consonance with the Rules of 2014 and the learned Coordinate Bench of this Court as well as the learned Division Bench of this Court, have only held that the permissible height of the building would be 11.5 meters. The learned Senior Counsel therefore submitted that the said height of the building of 11.5 meters have to be calculated by allowing the permissible deductions as provided in the Rules of 2014.

30. The learned Senior Counsel further submitted that Rule 54 of the Rules of 2014 stipulates the "height regulation" as well as what is to be excluded while calculating the height. Rule 54(vii) of the Rules of 2014 specifically deals with those areas which are to be excluded while calculating the height. The learned Senior Counsel further submitted that a very reading of Rule 54(vii)(b) reveals that the ground level parking floor or semi-basement parking floor area up to 2.7 meters for the purpose of calculating the building height has to be excluded.

31. Mr. S.S. Roy, the learned Standing Counsel appearing on behalf of the Tinsukia Municipal Board submitted that for the purpose of getting the benefit while calculating the height under Clause (vii)(b) of Rule 54 of the Rules of 2014 the basement parking, which will include a semi-basement parking, should specifically be used only for parking purpose and nothing else. The exclusive parking in the ground floor could also mean exclusive parking in the semi-basement parking and this aspect is very clear from a reading of Rule 54(x) of the Rules of 2014 which stipulates that the parking floor cannot exceed 2.7 meters measured up to the soffit level.

32. The learned Standing Counsel for the Tinsukia Municipal Board further submitted that in terms with the directions passed by learned Coordinate Bench in the judgment and order dated 22.05.2018 in WP(C) No. 418/2018 as well as the judgment and order dated 22.04.2019 passed by the learned Division Bench of this Court in Writ Appeal No. 188/2018, the Executive Officer of the Tinsukia Municipal Board has been duly taking steps for the purpose of ensuring compliance.

33. I have heard the learned counsels appearing on behalf of the parties and have given my anxious consideration to the respective submissions.

ANALYSIS AND DETERMINATION:

34. The issue involved in both the cases as have been observed hereinabove is, as to whether, the height of the building in question is within 11.5 meters as per the Rules of 2014 and what consequential directions are required to be passed.

35. The Petitioners in WP(C) No. 1212/2023 categorically states that they had dismantled the infringing portion and the present height of the building is not more than 11.5 meters. On the other hand, the learned Senior Counsel appearing on behalf of the writ Petitioners in WP(C) No. 392/2023 had submitted that there was no demolition carried out, and the height of the building is above 11.5 meters, which is further apparent from the fact that the learned Coordinate Bench of this Court held it that the height of the building as on the date of the judgment was 12.94 meters.

36. It is very pertinent to take note of that the issue involved in the earlier round of litigation was not, as to what was the height of the building as per the Rules of 2014. The issue involved was, as to whether, the permission which was granted for construction of the building of a height of 19.36 meters was permissible in terms with the Rules of 2014.

37. The learned Coordinate Bench of this Court as well as the

learned Division Bench of this Court applying Rule 67 of the Rules of 2014 observed that the height of the building in question cannot exceed 11.5 meters. The decision of the learned Coordinate Bench as well as the learned Division Bench of this Court having already held that the height of the building in question cannot exceed 11.5 meters, the same had attained finality. The only question before this Court is how the height of the building in question of 11.5 meters is to be measured as per the Rules of 2014.

38. This Court duly takes note of Rule 2(15) of the Rules of 2014 which defines the term the "building height". The said Rule 2(15) of the Rules of 2014 being relevant is reproduced herein under:

"building height" means the vertical distance measured in the case of flat roofs from the average level of ground around and contiguous to the building, or as decided by Authority, to the terrace of last habitable floor of the building adjacent to external wall and in the case of pitched roofs, up to the point where the external surface of the outer wall intersects the finished surface of the sloping roof, and in the case of gables facing the road, the mid-point between the eaves level and the ridge. The architectural features serving no other function except that of decoration shall be excluded for the purpose of taking heights. If the building does not abut street, the height shall be measured above the average level of the ground around and contiguous to the building. For hilly areas, the vertical distance shall be measured from the lower floor level instead of average ground level as applicable in case of plain;"

39. The height of the building has been defined to be the vertical distance measured in the case of flat roofs from the average level of

the ground around and contiguous to the building, or as decided by the Authority to the terrace of the last habitable floor of the building adjacent to the external wall. Therefore, a very reading of the said definition makes it clear that the vertical distance to be measured has to be either from the average level of the ground around and contiguous to the building, or as decided by the authority. Nothing has been brought on record to the effect that the Authority as defined in Rule 2(f) of the Rules of 2014 has decided, as to from where the vertical distance of the building is required to be measured. Under such circumstances, the height of the building has to be calculated from the average level of the ground around and contiguous to the building to the terrace of the last habitable floor of the building adjacent to the external wall. The said definition also excludes architectural features serving no functions except that of decoration.

40. Rule 54 of the Rules of 2014 specifically deals with “height regulation”. Clause (vii) of Rule 54 of the Rules of 2014 stipulates the various permissible deductions while measuring the height of the building. Taking into account its importance, Clause (vii) of Rule 54 of the Rules of 2014 is reproduced herein under:

“(vii) for the purpose of height calculation width of the road shall be taken as existing road width.

(a) lift machine room, staircase, parapet height shall not be included in the height of the building;

(b) for a building constructed on stilt with provisions of ground level parking floor or semi-basement parking floor, the height of the building shall be calculated by omitting the height of the parking floor up to a maximum of 2.7 m for the purpose of building height subject to provision of exclusive parking in the ground floor with special earthquake resistance measure. But for additional set back calculation, height of building shall be calculated from actual ground level;

(c) the following appurtenant structure shall not be included in the height of the building:-

- roof tanks and their support not exceeding 1.5m in height.*
- ventilating, air-conditioning, lift rooms and similar service equipments, stair covered with room upto 3.0 m in height, chimney and architectural features not exceeding 1.5 m in height."*

41. From a perusal of the above quoted Clause (vii) of Rule 54 of the Rules of 2014, it would show that for the purpose of height calculation, lift machine room, staircase, parapet height shall not be included in the height of the building. In terms of Sub-Clause (b) of Clause (vii) of Rule 54 of the Rules of 2014, a building constructed on stilt with provision of ground level parking floor or semi-basement parking, the height of the building shall be calculated by omitting the height of the parking floor up to a maximum of 2.7 meters for the purpose of building height. However, for the purpose of getting the benefit of the height of 2.7 meters, there should be exclusive parking on the ground floor with special earthquake resistance measures.

42. The learned Senior Counsel appearing on behalf of the

Petitioners in WP(C) No. 392/2023, though submitted, that such benefit would only be permissible if the parking is in the ground floor but in the opinion of this Court, it would not be the correct interpretation, taking into account in the very Sub-Clause itself, the Rule making authority had made it clear that this benefit would be provided to both ground level parking as well as for semi-basement parking.

43. At this stage, this Court finds it relevant to analyze Rule 54(vii) (b) of the Rules of 2014 conjointly with Rule 2(12) and Rule 2(15) of the said Rules. In the previous segments of the present judgment, this Court had referred to the definition of "building height" at Rule 2(15) of the Rules of 2014. From the said definition, it is clear that normally, the height of the building has to be measured from the average level of the ground around and contiguous to the building to the terrace of the last habitable floor of the building. Rule 2(12) of the Rules of 2014 defines "basement" to mean the lower storey of a building below or partly below the ground level consisting of one or more levels. In other words, as per the definition of "basement", it includes not only an area which is fully below the ground level but also an area which is partially above the ground level.

At this stage, it is pertinent to observe that the Rules of 2014 neither define what is "semi basement" nor stipulates what should be

the height of the semi-basement above the average level of the ground contiguous to building. Rather at Rule 59(1)(c) of the Rules of 2014 stipulates that the minimum height of each basement floor should not be less than 2.4 meters.

44. Now coming to Clause (b) of the Rule 54(vii) of the Rules of 2014, it would show that for a building constructed on stilt with provision of ground level parking **or** semi basement parking floor, the height of the building is to be calculated by omitting the height of the parking floor up to a maximum of 2.7 meters subject to there being provision of exclusive parking in the ground floor with special earthquake resistance.

From the above Sub-Clause, it is therefore clear that in respect to a building constructed on stilts with provision of ground level parking or semi-basement parking, the height of 2.7 meters would be excluded while calculating the height of the building from the average level of the ground around and contiguous to the building.

The above aspect if applied to the present facts, it is the opinion of this Court that the height of the building in question has to be measured from the average level of the ground around and contiguous to the building in question to the terrace of the last habitable floor. The measurement upon being made in the manner stated above, has then to be deducted by 2.7 meters. In the instant

case, the height of the building in question after such deduction cannot be above 11.5 meters.

45. Now let this Court deal with the contention of the learned Senior counsel for the Petitioner that the benefit under Rule 54(vii)(b) of the Rules of 2014 would only be permissible when the parking is in the ground. It is the opinion of this Court that the contention is fundamentally misconceived. The reason being a complete lack of understanding of what Rule 54(vii)(b) connotes. Rule 54(vii)(b) of the Rules of 2014 do not refer to parking completely underneath the ground. It refers to two types of parking. First, parking on the ground floor level constructed on stilts and secondly, semi basement parking.

A parking on the ground floor level constructed on stilts is a parking area on the ground floor of a building which may be residential or commercial. The said building is raised on pillars (stilts) and the open space is used for parking. Allowing any other use of the said area would render the said area to be counted as floor for residential or commercial use. It is under such circumstances, it is mentioned in Rule 54(vii)(b) of the Rules of 2014 that such ground floor has to be exclusively used for parking.

On the other hand, basement as per Rule 2(12) of the Rules of 2014 would include the lower storey of the building which is completely or partly under the average level of the ground around

and contiguous to the building. Rule 59(2) of the Rules of 2014 stipulates the various uses of the basement which includes parking. Therefore, the Rule making authority did not find it necessary to stipulate that the semi-basement parking shall be exclusively used for parking.

Under such circumstances, it is therefore the opinion of this Court that the said contention made by the learned Senior counsel for the Petitioners is misconceived.

46. In the backdrop of the above, let this Court now revert back to the facts involved. A perusal of the renewed approved plan clearly shows that the permissible parking is partly below the ground level and partly above the ground level. Although in the writ proceedings, the renewed approved land have been enclosed as an enclosure but, during the course of the hearing, a larger imprint of the said approved plan was placed before this Court, which is kept on record and marked with the letter "Y".

47. Taking into account the said approved plan, that Smt. Gayatri Devi Choudhury was permitted to construct a semi-basement parking, it is the opinion of this Court that the Petitioners in WP(C) No. 1212/2023 would be entitled to the benefit of Rule 54(vii)(b) of the Rules of 2014 i.e. the exclusion of 2.7 meters while calculating the height of the building. It is also the opinion of this Court that as the

permission so granted to Mrs. Gayatri Devi Choudhury specifically allowed only parking on the basement, there cannot be any other use of the basement save and except for parking.

48. Accordingly, both the writ petitions therefore stand disposed of with the following observations and directions:

(i) The total height of the building in question cannot exceed 11.5 meters.

(ii) The height has to be measured from the average level of ground around and contiguous to the building to the terrace of the last habitable floor and the measurement arrived at shall then be deducted by 2.7 meters.

(iii) As Smt. Gayatri Devi Choudhury was granted the permission to construct a basement to be used only for parking, the semi-basement area has only to be used for parking.

(iv) The Executive Officer, Tinsukia Municipal Board as well as the District Commissioner, Tinsukia shall carry out fresh measurement with the help of the PWD authorities of the district to ensure that there is compliance to the observations and directions made in the present judgment.

(v) It is further observed that in the circumstance, the height of

the building, after applying the deduction as aforesaid in Clause (ii), is above 11.50 meters, the Executive Officer, Tinsukia Municipal Board shall forthwith demolish the infringing portion and the cost of such demolition be recovered from the Petitioners in WP(C) No. 1212/2023.

(vi) This Court further directs that the Petitioners in WP(C) No. 1212/2023 cannot convert the semi-parking basement for any other purpose other than parking. It would amount to violation of the Approved Plan. If the Tinsukia Municipal Board notices any deviation, action may be taken against the Petitioners in WP(C) No.1212/2023 as per law.

(vii) Interim order stands vacated.

(viii) There shall be no order as to costs.

**Bijoy
Saha**

Comparing Assistant

Digitally signed
by Bijoy Saha
Date: 2026.03.02
17:13:30 +05'30'

JUDGE