

GAHC010046082023



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

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

Advocates for the writ petitioners : **Mr. B.D. Konwar, Senior Advocate**
(in WP(C)No.1212/2023) Mr. H. Agarwal, Advocate

Advocates for the writ petitioners : Mr. B Dutta, Senior Advocate
(in WP(C)No.392/2023) Mr. S Deka

Advocates for the respondents : Mr. N. Goswami
Government Advocate
Mr. S. S. Roy
Counsel, Tinsukia Municipal Board

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
ORDER

22.07.2024

Heard Mr. B. D. Konwar, the learned senior counsel assisted by Mr. H. Agarwal, the learned counsel for 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 private respondents in WP(C) No.1212/2023 and the said senior counsel Mr. B. Dutta, assisted by Mr. S. Deka, the learned counsel appearing on behalf of the writ petitioners in WP(C) No.392/2023 and Mr. B. D. Konwar, the learned senior counsel

assisted by Mr. H. Agarwal, the learned counsel for the private respondents in WP(C) No.392/2023. Also heard Mr. N. Goswami, the learned counsel appearing on behalf of Tinsukia Municipal Board.

2. The dispute between the petitioners and the private respondents had a long history in view of the fact that this is a second round of litigation on the same aspect of the matter. It is seen from the record that one Smti. Gayatri Devi Choudhury had taken the permission from Tinsukia Municipal Board for construction of a multi-storied building. On 12.05.2014, the permission was granted for construction of a G+4 storied commercial building. Perusal of the approved plan which has been enclosed as Annexure-2 to the writ petition reveals that the Smti. Gayatri Devi Choudhury was granted the permission for construction of a basement parking ground floor, first floor, second floor, third floor and fourth floor.

3. It is seen that a challenge was made to the permission so granted to the said Smti. Gayatri Devi Choudhury by filing a writ petition by the private respondents which has been registered and numbered as WP(C) No.418/2018. The Coordinate Bench of this Court vide the judgment and order dated 22.05.2018 had disposed of the said writ petition by categorically coming to a finding that RCC building has been constructed upto the height of 12.94 meters, i.e. 42 feet 6 inches as against the approved total height of the building of 19.36 meters (63 feet 6 inches). Taking into account the setback, the Coordinate Bench of this Court vide its judgment and order dated 22.05.2018, interfered with the building permission by making a declaration that the said building shall only be held 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. It was further observed that illegality being incurable, the Tinsukia Municipal Board was directed to take appropriate

steps to ensure strict compliance to Rule 67 (3) of the Building Rules, 2014 and in that respect to take appropriate steps by way of causing demolition to that part of the building in question which offends and was in violation to the mandate of Rule 67 (3) of the Building Rules, 2014. It was also directed that the building in question has to 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.

4. A Writ Appeal was filed by the petitioners in WP(C) No.1212/2023 which was registered and numbered as WA No.188/2018. The Division Bench of this Court vide its judgment and order dated 22.04.2019 did not interfere with the judgment of the Coordinate Bench of this Court and held that the construction made beyond 11.5 meters in height is liable to be demolished.

5. It is also seen that a Review Petition was also filed by the petitioners herein which was registered and numbered as Review Pet. No.129/2019. The said Review Petition was however dismissed vide an order dated 07.03.2022 on the ground that there was no ground which existed for exercise of review jurisdiction.

6. It is seen that pursuant thereto, certain steps were taken by the Tinsukia Municipal Board for taking action for demolishing the excess height and in that regard a notice was issued on 21.01.2023 by the Executive Officer, Tinsukia Municipal Board which has been assailed in the instant writ petition. It is further seen that pursuant thereto, there was another communication issued on 06.02.2023 by the Executive Officer, Tinsukia Municipal Board thereby directing the petitioners in WP(C) No.1212/2023 to abstain from doing any construction activities and to demolish the excess height of the building without any further delay. Being aggrieved, the

petitioners in WP(C) No.1212/2023 seeking a direction for physical measurement of the height have approached this Court by filing the instant writ petition. It is relevant to mention that on 03.03.2023, this Court had issued notice and stayed the operation of the communication dated 06.02.2023.

7. In the meanwhile, another writ petition was filed by the private respondents of WP(C) No.1212/2023 which was registered and numbered as WP(C) No.392/2023 wherein certain directions were sought for, for demolition of the excess height of the building in question beyond 11.5 meters on the ground that inspite of the specific direction being issued by this Court on the earlier round of litigation, there was no steps taken by the Tinsukia Municipal Board in that regard and also on the ground that Tinsukia Municipal Board had derelicted its duty and rather acted in collusion with the petitioners in WP(C) No.1212/2023. In the said proceedings, this Court had issued notice vide an order dated 25.01.2023 and there was also a further direction that there should not be any further construction in respect to the building in question till the returnable date.

8. This Court has duly heard the learned senior counsels appearing on behalf of both the parties as well as the counsel representing the Tinsukia Municipal Board. From the various directions which have been issued by the Coordinate Bench as well as the Division Bench of this Court, it is clear that the height of the building of the petitioners in WP(C) No.1212/2023 cannot exceed 11.5 meters. It is also seen from the Assam Notified Urban Areas (other than Guwahati) Building Rules, 2014 (for short, 'the Rules of 2014') that Rules 67 deals with regulations for commercial buildings while Regulation 67 (2) deals with buildings with a height of 11.5 meters. Regulation 67 (3) deals with the buildings beyond 11.5 meters. A further

perusal of the said Rule 67 shows that the said Rule relates to maintaining of the setback in respect to commercial buildings of height upto 11.5 meters and beyond. However, from the Rules of 2014, it is seen that height regulation is stipulated in Rule 54 of the Rules of 2014. We are concerned with Rule 54 (iii) wherein it is mentioned that the maximum height of the building and additional requirement shall not exceed 3 storey or a height of 11.5 meters without following additional provision for open space or all around the building "except in cases where otherwise specified" meaning hereby that normally the maximum height of the building shall not exceed three storey or a height of 11.5 meters without following additional provision for open space which can be found in Rule 67 (3) of the Rules of 2014. The use of the words "except in cases where otherwise specified" is relevant for the purpose of taking into consideration Rule 54 (vii) as to how the height calculation of the building is to be made. As in the previous segments of the instant order this Court has already dealt with that the permission which was granted to the petitioners in WP(C) No.1212/2023 was a permission for grant of G+4 storied building which also has a basement park in that context, it is very relevant to take note of Rule 54 (vii) (b) which being relevant is reproduced herein under:-

"54. (vii) (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."

9. A perusal of the above quoted Sub-Rule of the Rules of 2014 shows that when a building constructed on stilt with provisions of ground level parking floor or a 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 meters for the purpose of building height subject to provision of exclusive parking in the ground floor with special earthquake resistance measures. But for additional set back calculation, height of building shall be calculated from actual ground level. This Sub-Rule, i.e. Sub-Rule 54 (vii) (b) in the opinion of this Court comes within the ambit of the words "except in cases where otherwise specified" as stated in Rule 54 (iii).

10. In the instant case as there is no semi-basement parking or any floor kept only for parking, the question of the petitioners in WP(C) No.1212/2023 to get the advantage of 2.7 meters in the calculation of the height of the building does not arise. However, the height of the petitioners' building has to be calculated from the roof of the basement parking and cannot exceed 11.5 meters if calculated from the roof of the basement parking.

11. This Court also takes note of that there are very serious allegations being made by the private respondents in WP(C) No.1212/2023, as regards dereliction of duty by the Tinsukia Municipal Board in complying with the order passed by this Court, and as such, this Court for the interest of justice directs the District Commissioner, Tinsukia to carry out the measurement of the height of the building on the basis of the above observation and if the Office of the District Commissioner, Tinsukia does not have the infrastructure to do so, the District Commissioner, Tinsukia shall take the help of the concerned Executive Engineer, PWD of Tinsukia Division to carry out the said measurement.

12. List the matter again on 12.08.2024.

13. The said report be submitted by the District Commissioner, Tinsukia on or before the next date fixed to Mr. N. Goswami, the learned Government

Advocate so that the same can be placed before this Court. A copy of this order be served upon Mr. N. Goswami, the learned Government Advocate for due compliance.

14. The interim order passed earlier shall continue till the next date.

JUDGE

Comparing Assistant