

GAHC010131722023



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

Case No. : WP(C)/3462/2023

SURANJANA BORA DEY AND ANR
WIFE OF LATE AJAY KUMAR DEY,
RESIDENT OF HOUSE NO. 04, LACHIT NAGAR,
BYE LANE NO.-1, GUWAHATI,
KAMRUP(M), ASSAM.

2: AVIRAJ DEBORA
SON OF LATE AJAY KUMAR DEY

RESIDENT OF HOUSE NO. 04
LACHIT NAGAR

BYE LANE NO.-1
GUWAHATI

KAMRUP(M)
ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY COMMISSIONER AND SECRETARY TO THE GOVT. OF
ASSAM,
URBAN DEVELOPMENT DEPARTMENT,
DISPUR, GUWAHATI.

2: THE CHIEF EXECUTIVE OFFICER
GUWAHATI METROPOLITAN DEVELOPMENT AUTHORITY (GMDA)
GUWAHATI-05.

3: ANJANA DEY
WIFE OF LATE ALOK DEY

RESIDENT OF GORCHA-B

KOLKATA
WEST BENGAL.

4:AMITAV DEY
SON OF LATE ALOK DEY

RESIDENT OF GORCHA-B

KOLKATA
WEST BENGAL.

5:MIRA DEY
DAUGHTER OF LATE ALOK DEY

RESIDENT OF GORCHA-B

KOLKATA
WEST BENGAL

Advocate for the Petitioner : MR B KAUSHIK

Advocate for the Respondent : SC, G M D A

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

14.06.2023

Heard Mr. B. Kaushik, learned counsel for the petitioners as well as Mr. S. Bora, learned standing counsel for the GMDA for the respondent no.2.

2. At the outset the learned standing counsel for the respondent no.2 has submitted that the parent department of the GMDA is the Department of Housing and Urban Affairs, Govt. of Assam. Accordingly, it is submitted that the respondent no.1 is not the competent authority in respect of GMDA. The learned counsel for the petitioners shall take note of the same and take appropriate

steps if necessary to amend the cause title in the presence of the Registrar (Judicial), and to file an amended cause title before the Registry so as to have it incorporated in the case record.

3. The learned counsel for the petitioners has projected that there is a family dispute between the petitioner and the private respondent nos.3, 4 and 5 and therefore, at their instance, a complaint was filed before the GMDA that the construction of their house which is RCC G+2 building and standing in the name of the private respondents was illegal. On such complaint a show-cause notice dated 19.05.2023 was issued. It is submitted that all the land documents relating to the construction of the house are in the custody of the respondent nos. 3,4,5 and as their intention is to have the house demolished to eject the petitioners without following the due process of law, the complaint has been made.

4. It is submitted that the petitioners have also approached the Civil Court by filing a suit being T.S. no.355/2023, wherein injunction has been prayed for by filing Misc.(J) case no.597/2023, and the Court of learned Civil Judge No.2, Kamrup (M), Guwahati has issued an injunction against the private respondent nos.3, 4 and 5 not to alienate the disputed property.

5. It is submitted that as an occupier of the ground floor and first floor of the said house, the petitioners are also entitled to a notice under section 88 of the GMDA Act. It is submitted that as the documents relating to land and construction of houses are withheld by the private respondent nos.3, 4 and 5 and accordingly, the petitioners are unable to comply with the direction issued

by show-cause dated 19.05.2023 to produce the documents.

6. Accordingly by filing this writ petition under Article 226 of the Constitution of India, the petitioners have prayed for setting aside the impugned order dated 19.05.2023 and to direct the respondent authorities not to demolish the G+2 residential house, which is partly occupied by the petitioners.

7. Per contra the learned standing counsel for the GMDA had submitted that in the writ petition it is claimed that the house was built in the year 1981, but then the GMDA was not in existence. Hence, it is submitted that the GMDA would not be an appropriate authority to produce any records. However, as a complaint has been received that the construction is illegal, the GMDA is bound to issue a show cause notice which is impugned in this writ petition. Hence, it is submitted that the respondent no.2 also questions the maintainability of the writ petition.

8. Subject to the amendment of the cause title of the respondent no.1 and keeping the issue of maintainability open, issue notice of motion returnable on 21.07.2023.

9. The learned standing counsel for the respondent no.2 accepts notice on behalf of respondent nos.1 and 2. Requisite extra copies of the writ petition be served on the learned standing counsel in course of the day.

10. The petitioners shall take steps within 2(two) days for service of notice on the respondent nos.3, 4 and 5 by registered post with A/D.

11. Liberty is granted to the learned counsel for the petitioners to collect the postal receipt number from the Registry so as to track service through the postal website of India Post and to submit the track report before the Registry prior to the next date fixed.

12. Having observed that the petitioners claim that there is a family dispute and the respondent nos.3, 4 and 5 having initiated the process of making complaint before the respondent no.2 to have their house demolished and that the land documents and the building permission is not available with the petitioners, the Court is inclined to grant interim protection to the petitioners by providing that the Chief Executive Officer, GMDA (respondent no.2) shall not carry out the demolition of that part of the house where the petitioners are residing till the next returnable date.

13. However it is provided that further extension of the interim order would be subject to further orders that may be passed on the next date of listing.

14. The petitioners shall produce a certified copy of the order before the respondent no.2 with a copy to the learned standing counsel for the GMDA to bring the order to the notice of the said authority.

15. The pendency of the writ petition shall not be a bar to petitioners to reply to the show-cause notice dated 19.05.2023.

16. List the matter on 21.07.2023.

JUDGE

Comparing Assistant