

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 22-01-2015 & 29-01.2015 (Annexure-1 series) issued Notices under Section 87 of the GMDA Act to the petitioner asking her to show cause within ten days from receipt of the said notice, as to why her Assam Type Godown & shop, 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 Notices dated 22-01-2015 & 29-01.2015, the petitioner was further informed that unless her 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 her or seal the premises of such unauthorised construction. Petitioner submitted that she filed her reply in the month of February.

However, the respondent No.3, CEO, GMDA by his order dated 30.04.2015 (Annexure-3) stating that as she failed to show any reply/reason for her unauthorised construction, came to a finding that that her said unauthorised construction of the Assam Type Godown & shop is within Eco Sensitive Zone of Guwahati Master Plan notified on 07-07-2009, which is in force and accordingly directed her to vacate or demolish said Assam Type Godown within five days from the date of receipt of the order intimating that failure on her part to comply with the same, GMDA will be free to proceed with demolition or to seal the said unauthorised Assam Type Godown on its own, without giving any further intimation and expenses thereof shall be recovered from her 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 Notices dated 22-01-2015 & 29-01-2015 (Annexure-1 series) under Section 87 of the GMDA Act issued to the petitioner, it is seen that GMDA has not informed her that the Assam Type Godown & shop that she 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 Godown of the petitioner shall be kept in abeyance.