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

Case No. : WP(C)/5024/2025

MD JAHIRUL ISLAM
S/O JAMSHED ALI, R/O BYE LANE NO. 1, J.P. AGARWALLA ROAD,
BHARALUMUKH, P.O. AND P.S.- BHARALUMUKH, GUWAHATI, DIST-
KAMRUP (M), ASSAM, PIN-781009

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY, GOVERNMENT
OF ASSAM, MUNICIPAL ADMINISTRATION DEVELOPMENT, DISPUR,
GUWAHATI, PIN-781006, DIST- KAMRUP (M), ASSAM

2:THE COMMISSIONER
GUWAHATI MUNICIPAL CORPORATION
GANESHGURI
DISPUR
GUWAHATI
PIN-781005
DIST- KAMRUP (M)
ASSAM

3:THE MEMBER MAYOR-IN-COUNCIL (APPEAL)
GUWAHATI MUNICIPAL CORPORATION
UZAN BAZAR
GUWAHATI-78100

For the Petitioner(s) : Mr. U. K. Goswami, Advocate

For the Respondent(s) : Mr. P. Nayak, SC, GMC

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

Date : 01.11.2025

Heard Mr. U. K. Goswami, the learned counsel appearing on behalf of the Petitioner and Mr. P. Nayak, the learned Standing counsel appearing on behalf of the GMC.

2. Mr. P. Nayak, the learned Standing counsel appearing on behalf of the GMC Authorities submitted that from a perusal of the enclosures to the writ petition, it is apparently clear that the Petitioner was not granted any permission to construct on the third floor. Referring to Annexures P2 and P3 to the writ petition, the learned Standing counsel for the GMC submitted that the Petitioner has violated all norms and not only constructed the third floor but also the fourth floor. It is under such circumstances, the GMC Authorities have taken steps by passing appropriate orders for demolishing the third and fourth floor as well as the construction so made on the ground floor which was specifically earmarked for parking.

3. Mr. P. Nayak, the learned Standing counsel further referred to the recent judgment of the Supreme Court in the case of ***Kaniz Ahmed Vs. Sabuddin and Others reported in (2025) INSC 610*** referred to paragraph Nos. 6 and 7 and submitted that the Supreme Court was categorical in observing that if a person has constructed a building unauthorizedly, he is not entitled to regularization.

4. This Court has duly taken note of the judgment of the Supreme Court in the case of ***Kaniz Ahmed (supra)*** and has also further taken note

of Paragraph Nos. 6 and 7 which are reproduced herein under:

“6. The learned counsel appearing for the petitioner would submit that her client be given one chance to pray for regularisation of the unauthorised construction. We do not find any merit in such submission. A person who has no regards for the law cannot be permitted to pray for regularisation after putting up unauthorised construction of two floors. This has something to do with the rule of law. Unauthorised construction has to be demolished. There is no way out. Judicial discretion would be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. We are at pains to observe that the aforesaid aspect has not been kept in mind by many State Governments while enacting Regularisation of Unauthorized Development Act based on payment of impact fees.

7. Thus, the Courts must adopt a strict approach while dealing with cases of illegal construction and should not readily engage themselves in judicial regularisation of buildings erected without requisite permissions of the competent authority. The need for maintaining such a firm stance emanates not only from inviolable duty cast upon the Courts to uphold the rule of law, rather such judicial restraint gains more force in order to facilitate the well-being of all concerned. The law ought not to come to rescue of those who flout its rigours as allowing the same might result in flourishing the culture of impunity. Put otherwise, if the law were to protect the ones who endeavour to disregard it, the same would lead to undermine the deterrent effect of laws, which is the cornerstone of a just and orderly society. [See: Ashok Malhotra v. Municipal Corporation of Delhi, W.P.(C) No. 10233 of 2024 (Delhi High Court)]”

5. From the principles laid down in the above two quoted paragraphs and the same being applied to the facts of the case would show that the Petitioner herein is not entitled to any regularization of the third floor.

6. Considering the above, it is therefore the opinion of this Court that the interim order passed on 29.08.2025 cannot be further extended as

would go against the settled principles of law for which the interim order passed on 29.08.2025 and the subsequent extensions are vacated.

7. The Respondents in the GMC would be at liberty to take appropriate action as per law.

8. List this matter along with WP(C) No.4562/2024 again on 11.11.2025, on which date the GMC Authorities shall give an update as to what is the present status of the demolition.

JUDGE

Comparing Assistant