



GAHC010057622025



2025:GAU-AS:4184

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

**Case No. : WP(C)/1714/2025**

SRIMATI PUTUL KALITA  
W/O- LATE PADMA RAM KALITA,  
C/O- GAUTAM KALITA,  
R/O- SANTIPUR HILL SIDE, PNGB ROAD,  
(NEAR PRAGATI PATHSHALA AND STATE DISPENSARY),  
P.S AND P.O- BHARALUMUKH,  
DIST- KAMRUP (M), ASSAM, PIN-781009,

VERSUS

THE STATE OF ASSAM  
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.  
OF ASSAM, HOUSING AND URBAN AFFAIRS DEPARTMENT, DISPUR,  
GUWAHATI-6.

2:THE GUWAHATI METROPOLITAN DEVELOPMENT AUTHORITY (GMDA)  
BHANGAGARH  
GUWAHATI-05.

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

4:THE CHAIRMAN  
THE GUWAHATI METROPOLITAN DEVELOPMENT AUTHORITY (GMDA)  
BHANGAGARH  
GUWAHATI-05.

5:THE DISTRICT COMMISSIONER  
KAMRUP METROPOLITAN DISTRICT  
HENGRABARI  
GUWAHATI-36.



6:THE GUWAHATI MUNICIPAL CORPORATION  
REP BY THE DY. COMMISSIONER OF THE GUWAHATI MUNICIPAL  
CORPORATION

7:THE CIRCLE OFFICER  
GUWAHATI REVENUE CIRCLE  
ULUBARI  
GUWAHATI-07.

8:NABANITA KALITA  
W/O- DHANI RAM KALITA  
C/O- GAUTAM KALITA  
R/O- SANTIPUR HILL SIDE  
PNGB ROAD  
(NEAR PRAGATI PATHSHALA AND STATE DISPENSARY)  
P.S AND P.O- BHARALUMUKH  
DIST- KAMRUP (M)  
ASSAM  
PIN-78100

**Advocate for the Petitioner** : MS A MAJUMDER, WASIM RAJA

**Advocate for the Respondent** : GA, ASSAM, SC, G M D A, SC, GMC

**BEFORE**  
**HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

**JUDGMENT & ORDER**

**Date : 04-04-2025**

Heard Mr. W. Raja, learned counsel for the petitioner; Mr. P. Nayak, learned Standing Counsel, Guwahati Metropolitan Development Authority [GMDA] for the respondent nos. 1, 2, 3, 4 & 6; and Ms. S. Baruah, learned Junior Government Advocate, Assam for the respondent nos. 5 & 7.

2. In this writ petition under Article 226 of the Constitution of India, the petitioner has stated that the petitioner and her daughter [the respondent no. 8] purchased a plot of land measuring 1 Katha 5 Lessas, covered by Dag no.



278 & Patta no. 123, situate at Sahar – Bharalumukh Part-II, Mouza – Jalukbari, Guwahati Revenue Circle [‘the subject-plot’, for short] by way of a registered Sale Deed no. 4471 dated 10.11.1994. After the purchase, the subject-plot got mutated in the name of the petitioner and the respondent no. 1 jointly by an Order dated 24.03.1995 passed in Mutation Case no. 273/1994-1995 by the respondent no. 7. At the time of purchase of the subject-plot, there were one pre-existing RCC [G+1] building and one RCC Assam type house attached with the RCC building on the subject-plot.

3. The petitioner has further stated that there was no mention in the Sale Deed regarding the individual shares of the petitioner and the respondent no. 8. There was, however, a mutual settlement agreement dated 04.11.1999 between the petitioner and the respondent no. 8, which contained a condition of erecting a partition wall by the respondent no. 8 between the lands of the petitioner and the respondent no. 8.

4. The petitioner has stated that since the registration of the Sale Deed, the petitioner with her son has been staying in the pre-existing RCC [G+1] building and the respondent no. 8 was residing in the pre-existing RCC Assam type house. The petitioner has further stated that in February, 2019, the respondent no. 8 started demolishing the pre-existing RCC Assam type house to construct a new RCC building in its place. After demolishing the pre-existing Assam type house, the respondent no. 8 started laying foundation of a new multi-storied RCC building. The petitioner has alleged that in the process of demolishing the RCC Assam type house and laying the foundation of the new multi-storied RCC building, a common wall existing between the two houses started got due to not



following the mandate of building construction like not leaving minimum side margins and by laying foundation of the posts of the new multi-storied RCC building underneath the pre-existing RCC building wherein the petitioner stays.

5. The petitioner has stated that highlighting the unauthorized nature of construction carried out by the respondent no. 8, the petitioner [i] lodged a First Information Report [FIR] before the Officer In-Charge, Bharalumukh Police Station on 03.07.2019; [ii] submitted a nos. of applications / complaints / reminders before the Commissioner / Associate Planner, Guwahati Municipal Corporation informing about the illegal construction carried out by the respondent no. 8; and [iii] submitted an application before the Chief Executive Officer, GMDA for demolition of the construction carried out by the respondent no. 8. The petitioner has further alleged that the respondent no. 8, without the knowledge of the petitioner, got the subject-plot partitioned by initiating a partition case and got a separate patta issued in her name. Having learnt about the partition and issuance of separate patta, the petitioner stated to have instituted a case, Misc. Case no. 29/2022 before the respondent no. 7 for annulment of the separate patta and cancellation of the order of partition. The petitioner has further alleged that the separate patta was issued without carrying out any demarcation process.

6. The petitioner has further contended that though a separate patta was obtained by the respondent no. 8 on 24.05.2010, the office of the respondent no. 3 had issued a No Objection Certificate [NOC] under Section 25 of the GMDA Act, 1945 for construction of the new RCC building on the subject-plot much earlier on 27.12.2004. The petitioner received more information under the



Right to Information Act, 2005 regarding illegal nature of construction carried out by the respondent no. 8.

7. It has been submitted that in the course of the ongoing disputes between the parties, both the petitioner and the respondent no. 8 were issued show cause notices by the respondent Guwahati Municipal Corporation [GMC] and the respondent Guwahati Metropolitan Development Authority [GMDA] authorities asking both of them to show cause as regards unauthorized constructions of their respective building.

8. The learned counsel for the petitioner has thereafter, confined his submissions as regards the proceedings initiated by the respondent GMDA authorities by referring to the show cause notice issued to the petitioner and the order passed pursuant to such show cause notice.

9. In view of the nature of grievance raised by the petitioner and the order to be passed after hearing the learned counsel for the afore-mentioned parties, this writ petition is taken up for final consideration at the motion stage itself. Issuance of notice to the respondent no. 8 is found not necessary in view of the order to be passed in this writ petition.

10. The petitioner was served an Office Letter dated 30.08.2019 by the Town Planner, GMDA asking her to submit the copies of the NOC of building permission, approved drawings and land documents on the basis of which the petitioner had constructed the RCC building on the subject-land. The petitioner responded by submitting a reply on 16.09.2019 wherein she stated that the



building in question standing on the subject-land was not constructed by her but by the previous owner of the subject-land from whom she purchased the subject-land with the pre-existing RCC building. The petitioner stated that few minor modifications were, however, carried out in the said pre-existing building by her during the period from 1999 to 2011. After the said reply, the respondent no. 3 served a show cause notice under Section 87 and Section 88 of the GMDA Act, 1985 alleging that the petitioner had undertaken or carried out development of the building and the subject-land without requisite approval of the GMDA by contravening the provisions of Section 24 and Section 25 of the GMDA Act, 1985. By the said show cause notice, the petitioner was asked to show cause within a stipulated period as to why the irregular/unauthorized building should not be demolished or the unauthorized erection or work of the premises should not be sealed under the provisions of Section 88 of the GMDA Act. On receipt of the Show Cause Notice dated 16.10.2019 from the respondent no. 3, the petitioner submitted her reply on 28.10.2019.

11. The petitioner was again served a letter dated 19.01.2021 by the Town Planner, GMDA directing her to submit the documents to establish the year of construction of the pre-existing building on the subject-land and the petitioner replied to the said letter dated 19.01.2021 on 01.02.2021. The petitioner has stated that after more than two years therefrom, another show cause notice dated 24.08.2023 was served upon the petitioner by the respondent no. 3 under Section 87 and Section 88 of the GMDA Act, 1985. In the said Show Cause Notice, it was alleged that the petitioner had constructed one RCC [G+1] building structure on the subject-land contravening the provisions of Section 24 and Section 25 of the GMDA Act, 1985 and the Building Bye-Laws in force. The



petitioner was directed to show cause within a period of ten days from the date of receipt of the show cause notice as to why the irregular/unauthorized building should not be demolished, etc. The petitioner again submitted a reply to the said show cause notice on 02.09.2023 stating her case.

12. Finally, the respondent no. 3 has passed an Order on 14.08.2024 in the said proceedings treating the RCC [G+1] building standing on the subject-land as an unauthorized building. Exercising powers purportedly conferred under Section 88 of the GMDA Act, 1985, the respondent no. 3, by the Order dated 14.08.2024, has ordered for demolition of the unauthorized structure within a period of ten days from the date of receipt of the order on the ground that it was constructed in violation of the Building Bye-Laws in force. The order has further observed that in the event of failure on the part of the petitioner to carry out the direction, the GMDA would be free to proceed with the demolition of the unauthorized construction without giving any further information. On receipt of the Order dated 14.08.2024, the petitioner submitted an application on 28.08.2024 seeking extension of time. By a subsequent Order dated 30.09.2024, the respondent no. 3 had reiterated the direction to carry out demolition of the unauthorized structure. The petitioner has stated that the entire proceedings was initiated on the basis of a complaint submitted by the respondent no. 8 alleging unauthorized construction of the RCC [G+1] building on the subject-land, as reflected from the Order dated 14.08.2024 itself.

13. The petitioner has stated that the respondent no. 3 had also issued a show cause notice to the respondent no. 8 regarding unauthorized construction carried out in respect of the new RCC building and the proceeding initiated by



such show cause notice, had culminated into an Order dated 22.05.2023, whereby, the respondent no. 3 had also ordered demolition of the unauthorized parts of the RCC building constructed by the respondent no. 8. As the learned counsel for the petitioner has submitted that the petitioner is concerned with the Order dated 14.08.2024, it is not necessary to dilate further as regards the proceedings initiated against the respondent no. 8 regarding the new RCC building being constructed by the respondent no. 8 in this writ petition.

14. From the Order dated 14.08.2024, it is noticed that after issuance of a show cause notice dated 24.08.2023 and receipt of a reply from the petitioner on 02.09.2023, the respondent no. 3 has recorded that the petitioner could not produce any valid permission as regards the RCC [G+1] building and has treated the building as an unauthorized building. By the Order dated 14.08.2024, the respondent no. 3 in exercise of the powers under Section 88 of the GMDA Act, 1985 has ordered for demolition of the unauthorized structure purportedly constructed in violation of the provisions of the Building Bye-Laws made thereunder and as applicable.

15. On perusal of the materials brought on record, it is noticed that the proceedings against the petitioner which culminated into the Order dated 14.08.2024, were under the provisions of Section 24, Section 25, Section 87 and Section 85 of the GMDA Act, 1985.

16. On perusal of the provisions of the GMDA Act, 1985, it is found that the petitioner has an adequate and efficacious statutory remedy of filing an appeal against the impugned Order dated 14.08.2024. Chapter VIII of the GMDA Act



under the heading – Appeals and the Appellate Authority, contains Section 71, Section 72 and Section 73. For ready reference, Section 71, 72 & 73 are quoted hereinbelow :-

71. **Appointment of appellate authority** : [1] Save as otherwise provided, the State Government shall appoint an appellate authority to hear all appeals arising out of the provisions of this Act. The decision of appellate authority shall be final.

[2] The person or persons appointed by the State Government as appellate authority shall have the qualification of a District Judge, or of becoming a member of the Assam Board of Revenue constituted under the Assam Boards of Revenue Act, 1962 [Assam Act XXI of 1962]. The appointment shall be on such terms and conditions as the State Government may decide.

72. **Duties of the appellate authority** : [1] The duties and powers of the appellate authority shall be as follows:

[a] to hear and decide appeals against the orders of the authority;

[b] to decide and hear appeals in respect of such other matters and exercise such other powers as may be entrusted to and conferred upon it by the State Government in accordance with the provisions of this Act.

[2] All appeals to the appellate authority shall be filed within a month from the date of the order appealed against. The time required for taking out copies of the order shall be excluded. The appellate authority may, however, in its discretion condone such delay in filing appeal for sufficient reasons.

73. **Procedure of working of the appellate authority** : [1] The appellate authority shall conduct its proceedings in the prescribed manner after giving the opposite party or anyone interested in the order appealed against an opportunity of being heard.

[2] The appellate authority may, at any time, call for any extract from any proceeding of the State Government or authority and call for any return or statement or report concerning or connected with any matter with which the authority has been authorised to deal.

[3] The appellate authority shall have all the powers of a Civil Court for the purposes of



taking evidence on oath or enforcing the attendance of witnesses including the parties interested or any of them and compelling the production of documents and material objection if considered necessary.

[4] The appellate authority in its discretion may make any orders regarding the cost to be paid by any of the parties to the proceeding and the appellate authority shall have full power to determine by whom or out of what property and to what extent such costs are to be paid and the authority shall be bound to execute the orders of the appellate authority in accordance with the directions, if any, contained in the order and such costs or amounts awarded by the appellate authority shall be realised as arrears of land revenue.

17. By a Notification bearing no. GDD.49/94/Pt/44 dated 22.08.1996 issued under Section 71[2] of the GMDA Act, 1985, the State Government has designated the District & Sessions Judge, Kamrup, Guwahati as an Appellate Authority to decide appeals arriving of the provisions of the GMDA Act, 1985 with the approval of the Gauhati High Court.

18. In this connection, the directions made by a three-Judge Bench of the Hon'ble Supreme Court of India in Writ Petition [Civil] no. 295 of 2022 [in Re-direction in the matter of demolition of the structures, 2024 IMSC 866, are of the relevance and they are quoted hereinbelow :-

#### IX. DIRECTIONS

90. In order to allay the fears in the minds of the citizens with regard to arbitrary exercise of power by the officers/officials of the State, we find it necessary to issue certain directions in exercise of our power under Article 142 of the Constitution. We are also of the view that even after orders of demolition are passed, the affected party needs to be given some time so as to challenge the order of demolition before an appropriate forum. We are further of the view that even in cases of persons who do not wish to contest the demolition order, sufficient time needs to be given to them to vacate and arrange their affairs. It is not a



happy sight to see women, children and aged persons dragged to the streets overnight. Heavens would not fall on the authorities if they hold their hands for some period.

91. At the outset, we clarify that these directions will not be applicable if there is an unauthorized structure in any public place such as road, street, footpath, abutting railway line or any river body or water bodies and also to cases where there is an order for demolition made by a Court of law.

#### A. NOTICE

i. No demolition should be carried out without a prior show cause notice returnable either in accordance with the time provided by the local municipal laws or within 15 days' time from the date of service of such notice, whichever is later.

ii. The notice shall be served upon the owner/occupier by a registered post A.D. Additionally, the notice shall also be affixed conspicuously on the outer portion of the structure in question.

iii. The time of 15 days, stated herein above, shall start from the date of receipt of the said notice.

iv. To prevent any allegation of backdating, we direct that as soon as the show cause notice is duly served, intimation thereof shall be sent to the office of Collector/District Magistrate of the district digitally by email and an auto generated reply acknowledging receipt of the mail should also be issued from the office of the Collector/District Magistrate. The Collector/DM shall designate a nodal officer and also assign an email address and communicate the same to all the municipal and other authorities in charge of building regulations and demolition within one month from today.

v. The notice shall contain the details regarding:

a. the nature of the unauthorized construction.

b. the details of the specific violation and the grounds of demolition.

c. a list of documents that the noticee is required to furnish along with his reply.

d. The notice should also specify the date on which the personal hearing is fixed and the designated authority before whom the hearing will take place;

vi. Every municipal/local authority shall assign a designated digital portal, within 3 months



from today wherein details regarding service/pasting of the notice, the reply, the show cause notice and the order passed thereon would be available.

#### B. PERSONAL HEARING

- i. The designated authority shall give an opportunity of personal hearing to the person concerned.
- ii. The minutes of such a hearing shall also be recorded.

#### C. FINAL ORDER

- i. Upon hearing, the designated authority shall pass a final order.
- ii. The final order shall contain:
  - a. the contentions of the noticee, and if the designated authority disagrees with the same, the reasons thereof;
  - b. as to whether the unauthorized construction is compoundable, if it is not so, the reasons therefor;
  - c. if the designated authority finds that only part of the construction is unauthorized/noncompoundable, then the details thereof.
  - d. as to why the extreme step of demolition is the only option available and other options like compounding and demolishing only part of the property are not available.

#### D. AN OPPORTUNITY OF APPELLATE AND JUDICIAL SCRUTINY OF THE FINAL ORDER.

- i. We further direct that if the statute provides for an appellate opportunity and time for filing the same, or even if it does not so, the order will not be implemented for a period of 15 days from the date of receipt thereof. The order shall also be displayed on the digital portal as stated above.
- ii. An opportunity should be given to the owner/occupier to remove the unauthorized construction or demolish the same within a period of 15 days. Only after the period of 15 days from the date of receipt of the notice has expired and the owner/occupier has not removed/demolished the unauthorized construction, and if the same is not stayed by any appellate authority or a court, the concerned authority shall take steps to demolish the same. It is only such construction which is found to be unauthorized and not compoundable



shall be demolished.

iii. Before demolition, a detailed inspection report shall be prepared by the concerned authority signed by two Panchas.

#### E. PROCEEDINGS OF DEMOLITION

i. The proceedings of demolition shall be video-graphed, and the concerned authority shall prepare a demolition report giving the list of police officials and civil personnel that participated in the demolition process. Video recording to be duly preserved.

ii. The said demolition report should be forwarded to the Municipal Commissioner by email and shall also be displayed on the digital portal.

92. Needless to state that the authorities hereinafter shall strictly comply with the aforesaid directions issued by us.

93. It will also be informed that violation of any of the directions would lead to initiation of contempt proceedings in addition to the prosecution.

94. The officials should also be informed that if the demolition is found to be in violation of the orders of this Court, the officer/officers concerned will be held responsible for restitution of the demolished property at his/their personal cost in addition to payment of damages.

19. Subsequent to the decision in 'Re-direction in the matter of demolition of structures', a two-Judge Bench of the Hon'ble Supreme Court has issued certain additional directions in *Rajendra Kumar Barjatya and another vs. U.P. Avas Evam Vikas Parishad and others*, 2024 SCC OnLine SC 3767.

20. Mr. Nayak, learned Standing Counsel, GMD has specifically referred to the directions contained in Clause [ix] to contend that any appeal if preferred, is to be disposed of by the Appellate Authority within a period of ninety days from the date of preferring the appeal.

21. As per sub-section [2] of Section 72 of the GMDA Act, 1985, an appeal is to



be preferred within a month from the date of the order appealed against. In the case in hand, a period of limitation to prefer an appeal against the impugned Order dated 14.08.2024 has already expired. In any view of the matter, the Appellate Authority has also been vested with the jurisdiction to condone any delay in filing an appeal.

22. As an adequate and statutory remedy is available to the petitioner to assail the impugned Order dated 14.08.2024 under the provisions of the GMDA Act, 1985, this court is of the considered view that instead of pursuing this writ petition, the petitioner shall avail the statutory remedy of appeal under the GMDA Act as the Appellate Authority has been vested with all the powers of a civil court for the purposes of taking evidence on oath or enforcing the attendance of witnesses including the parties interested or any of them and compelling the production of documents and material objection, if considered necessary. On the other hand, a writ petition is ordinarily, not entertained if disputed question of facts fall for consideration.

23. In the above view of the matter, the writ petition is not entertained, reserving the liberty to the petitioner to avail the statutory remedy under the provisions of the GMDA Act by filing an appeal before the Appellate Authority within a period of one month from today.

24. The petitioner is a senior citizen, being a woman of 73 years. In order to allay any apprehension regarding coercive action in terms of the Order dated 14.08.2025, it is observed that there shall not be any coercive action in terms of the Order dated 14.08.2024 till a period of one month from today. As regards



extension of interim relief after expiry of one month from today, it is left open to the discretion of the Appellate Authority, if any appeal is preferred within a period of one month from today.

25. It is further observed that if the petitioner prefers any application for condonation of the period of delay in preferring an appeal, the Appellate Authority will consider the same by taking into consideration all the relevant factors including the status of the petitioner as a senior citizen, into consideration. The Appellate Authority while considering the appeal shall give due regard to the direction made in Clause [ix] in the writ petition, Writ Petition [Civil] no. 295 of 2022 [supra], quoted above. It is clarified that the observations hereinabove are made only for disposal of the writ petition and none of the observations shall be construed as observations on the merits of claims of either the petitioner or the respondent no. 8. Meaning thereby, the Appellate Authority will decide the appeal, if filed, on its own merits and in accordance with law.

26. With the observations made and directions given above, the writ petition is disposed of. No cost.

**JUDGE**

**Comparing Assistant**