

(2024) 10 GAU CK 1181
In the Gauhati High Court
Case No : WP(C) Of 4640 Of 2024

Anowaruddin Wakf Estate And 2 Ors

APPELLANT

Vs

State Of Assam And 5 Ors

RESPONDENT

Date of Decision : 03-10-2024

Acts Referred:

Guwahati Municipal Corporation Act, 1971 — Section 337, 337(3)

Citation : (2024) 10 GAU CK 1181

Hon'ble Judges : Devashis Baruah, J

Bench : Single Bench

Advocate : A. I. Ali, P. Nayak

Final Decision : Disposed Of

Judgement

Devashis Baruah, J

1. Heard Mr. A. I. Ali, the learned counsel appearing on behalf of the petitioners and Mr. P. Nayak, the learned Standing Counsel appearing on behalf of the Respondent Nos. 1 to 5.

2. The instant writ petition has been filed by the petitioners complaining about the highhanded action on the part of the Respondent authorities in removing the kiosk/shop of the petitioners including the goods therein at the middle of the night of 12.07.2024 from the Petitioner No.1's premises, that too, without issuance of any notice.

3. The brief facts leading to the dispute are narrated briefly infra. It is the case of the petitioners herein that a plot of land admeasuring 3 bighas 3 kathas and 9.93 lechas covered by Dag Nos.1498, 1500, 1502, 1503, 1653, 1654 and 1655 of KP No.585 under Mouza-Ulubari, Village-Ulubari in the district of Kamrup (Metro), Assam is a part of Anowaruddin Wakf Estate, i.e. the Petitioner No.1. The said plot of land is adjacent to the GS Road at Bhangagarh. In the said plot of land, the Petitioner No.2, who is the Mutawalli of the Petitioner No.1 had leased out a kiosk/shop to the Petitioner No.3 in order to allow him to open a shop to carry

out food and beverage business. In that regard, a tenancy agreement was also entered into between the Petitioner No.2 for an on behalf of the Petitioner No.1 and Petitioner No.3. To the utter shock and surprise of the petitioners, at around 11:30 PM on 12.07.2024, without any notice whatsoever, some persons forcefully removed the kiosk/shop of the petitioners. The said acts were committed with the help of a hydraulic crane bearing registration No.AS01-DS-8321 and a Dumper Truck bearing registration No.AS01-QC-9459. On the basis thereof, an FIR was filed at Bhangagarh Police Station which was registered and numbered as Bhangagarh P.S. Non FIR Case No.21/2024. Subsequently, the petitioners could come to learn on further enquiries and a communication dated 17.08.2024 being issued by the Collector of the Guwahati Municipal Corporation that the said action was taken upon verbal instructions of one Additional Secretary to the Government of Assam in the Department of Housing and Urban Affairs on the ground that during field inspection, no trade licence was found. The contents of the said communication dated 17.08.2024 being relevant is reproduced herein under:-

"To,

Syed Javed Kaisar, Mutawalli,

Anowaruddin Wakf Estate.

Anowarpur, GMCH Road, Guwahati.

Sub: Reply to your letter regarding illegal encroachment by personnel impersonating GMC authority.

Sir,

With reference to the subject cited above, I have the honour to inform you that the movable shop in question was removed by Enforcement Branch, GMC as per verbal instruction of the Additional Secretary to the Govt. of Assam, DoHUA. During the field inspection no valid Trade License was found and so the movable shop was removed by the Enforcement Branch, GMC and the same is currently kept at Div-V ground of GMC.

This is for favour of your kind information.

Yours Faithfully,

Collector,

Guwahati Municipal Corporation

Guwahati."

4. It is under such circumstances, the petitioners have approached this Court alleging the high handedness on the part of the GMC authorities, that too on the basis of verbal instructions being issued by an official of the Department of Housing and Urban Affairs. In addition to that, the petitioners alleged that such

action without notice to the petitioners goes against the Rule of law.

5. This Court vide an order dated 13.09.2024 issued notice and directed the Respondent authorities to bring on record their stand by filing the affidavit. In accordance thereto, an affidavit was filed on 25.09.2024 by the Joint Commissioner, Guwahati Municipal Corporation. A perusal of the contents of the said affidavit shows that the respondents had tried to improve on the grounds set out in the communication dated 17.08.2024 in as much as certain additional aspects regarding the reasons brought on record by filing the said affidavit. The additional reasons so assigned is that a complaint was received by the Collector of the Guwahati Municipal Corporation on 11.07.2024 filed by one Smt. Archana Das alleging inter-alia that an illegal container shop was placed in front of her business premises by the official of the Petitioner No.1 without any prior notice and the Collector, Guwahati Municipal Corporation was therefore requested to remove the illegally placed shop from the vicinity of the rented premises. It has been further mentioned that on the basis of the complaint submitted on 11.07.2024, the Enforcement Branch of the GMC conducted an inspection on 11.07.2024 itself and could not find the owner of the shop, i.e. the Petitioner No.3 on the premises. Subsequently, the GMC Authorities again revisited the aforesaid movable shop on the very next date, but the Petitioner No.3 remained missing, and as such, the GMC was unable to inspect the trading license of the Petitioner No.3. It was also mentioned that the said container shop was placed in such a manner that it blocked the part of the front of the establishment belonging to the complainant Smt. Archana Das and considering that it was posing a hindrance to the business of the complainant, the Enforcement Team of the GMC removed the same with the help of crane in the midnight of 12.07.2024. It was also mentioned that the Additional Secretary to the Government of Assam, Department of Housing and Urban Affairs had also issued instructions to the concerned officer of the GMC in that regard. Pursuant to the filing of the instant writ petition, an additional affidavit was filed by the petitioners wherein the details were placed as regards the contents of the kiosk/shop and the value thereof.

6. I have heard the learned counsels appearing on behalf of the petitioners as well as the Respondent authorities. Mr. A. I. Ali, the learned counsel appearing on behalf of the petitioners submitted that this is a case of extreme high handedness on the part of the Respondent authorities in taking such actions which is not contemplated as per law. He submitted that in the communication dated 17.08.2024, the Collector of the Guwahati Municipal Corporation who is also the Respondent herein, did not mention anything as regards the complaint being filed by Smt. Archana Das, the owner of the Lachit Medicos. He submitted that Smt. Archana Das was a tenant of the Petitioner No.1 and she never complained to the Petitioner No.1 about the difficulties faced. He further submitted that in the affidavit, it was stated that such action was taken at the instance of Smt. Archana Das. The learned counsel appearing on behalf of the petitioners further submitted that even assuming a complaint was filed by Smt.

Archana Das, it was an inter-se dispute between the said Smt. Archana Das and the Petitioner Nos.1 & 2 and the GMC Authorities ought not to have intermingled in respect to the said dispute.

7. Per contra, Mr. P. Nayak, the learned counsel appearing on behalf of the Respondent authorities submitted that upon receipt of the complaint submitted by Smt. Archana Das on 11.07.2024, the Enforcement Branch of the GMC had visited the kiosk/shop on two occasions, but did not find the Petitioner No.3 and could not therefore verify the trade license. He further submitted that the place at which the area wherein the kiosk was set up was in violation to the setback as provided under the Guwahati Municipal Corporation Act, 1971 (for short, 'the Act of 1971') as well as the Building bye-laws, and as such, the Respondent authorities have committed no illegalities in removing the kiosk/shop. He further submitted that the structure standing thereon was not actually a kiosk, but a kiosk like structure permanently attached to the earth.

8. This Court has heard the learned counsels appearing on behalf of the parties at length. During the course of the hearing, this Court enquired with the learned counsel appearing on behalf of the Respondent authorities as to under what power such action was taken by the Respondent authorities in as much as not having a trade license, the Respondent authorities could have at best sealed the premises that too after notice but could not have removed the premises. The learned counsel appearing on behalf of the Respondent authority submitted that the kiosk which was permanently transferred to the earth was in violation to the setback regulations, and as such, the said action was taken.

9. In view of the said submission, this Court put another query upon Mr. P. Nayak, the learned counsel appearing on behalf of the Respondent authorities as to whether such an action is permissible without notice taking into account that the said action would have been possible only in terms with Section 337 of the Act of 1971, that too only when the Commissioner of GMC passes an order in terms with Sub-Section (3) of Section 337 of the Act of 1971. The learned counsel for the Respondent authorities submitted that the issuance of notice would have been an empty formality taking into account that the only conclusion which could be arrived is that there was a violation to the setback. In that regard, he has referred to the judgment of the Supreme Court in the case of Aligarh Muslim University & Others vs. Mansoor Ali Khan, reported in (2000) 7 SCC 529.

10. In the backdrop of the above, this Court had given an anxious consideration to the respective submissions. The materials on record, more particularly the communication dated 17.08.2024 is silent on the aspect of a complaint submitted by any person except verbal instructions being given by an Additional Secretary of the Department of Housing and Urban Affairs. It is relevant to take note of at this stage, the judgment of the Supreme Court in the case of Commissioner of Police, Bombay vs.

Gordhandas Bhanji, reported in AIR 1952 SC 16, wherein it was categorically observed that public orders made publicly has to be tested on the basis of the reasons contained therein and not on the basis of any affidavit filed subsequently. The said aspect of the matter has also been reiterated by the Constitution Bench of the Supreme Court in the case of

Mohinder Singh Gill & Another vs. Chief Election Commission of India, New Delhi & Others, reported in (1978) 1 SCC 405 wherein at paragraph No.8, the Supreme Court held as follows:-

"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji²:

"Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

Orders are not like old wine becoming better as they grow older."

11. From the above propositions of law well settled and taking into account the facts in the present case, it would be seen that the action which was taken by the Respondent authorities was at the behest of certain verbal instructions of the Additional Secretary of the Department of Housing and Urban Affairs, Government of Assam. But the question arises as to whether a statutory authority can act merely on such verbal instructions. The answer was to be in the negative taking into account that our country which follows the Rule of law, a Statutory Authority cannot act on the basis of verbal instructions. On this ground itself, the impugned actions are bad in law.

12. Be that as it may, let this Court consider the other reason assigned in the affidavit filed by the Respondents. In terms with the said affidavit actions were taken on the basis of a complaint so filed by Smt. Archana Das complaining about placing a container shop in front of her shop. In the said complaint, it was categorically alleged as to who has done it. It is appalling to take note of that the Respondent authorities even did not care to make enquiry with the Petitioner No.1 against whom such allegations were made before taking such action. It is very surprising to take note of that in the complaint so submitted by Smt. Archana Das, there is no mention whatsoever as regards the Petitioner No.3. In the affidavit so filed by the Respondents, there is a reference being made that

the Enforcement Branch of the GMC authorities were rather looking out for the Petitioner No.3, but strangely the Respondents did not make any enquiries with the Petitioner Nos.1 & 2 against whom allegations were made.

13. This Court further is shocked and surprised in the manner in which certain private disputes between Smt. Archana Das as well as the Petitioner No.1 is being sought to be settled by the GMC authorities. It is well settled that the Statutory Authorities are required to function within the ambit of the statutory provisions and not at the dictates of any official, more so on verbal instructions as was done in the present case. The manner in which the Respondent Authorities took action to settle the private dispute between Smt. Archana Das and the Petitioners that too without giving an opportunity to the Petitioners speaks large of the high handed actions on the part of the Respondent Authorities.

14. Another aspect of the matter which shocks the conscience of this Court is the manner in which the acts were committed by the Respondent Authorities. It is an admitted fact that at the middle of the night of 12.07.2024 and 13.07.2024, the Respondents have committed the act of removal of kiosk. This Court had enquired with Mr. P. Nayak, the learned Standing Counsel, GMC as to whether such actions are permissible at such hour of the night, that too without the consent of the Petitioners. He submitted that the Enforcement Branch of GMC carries out such acts at night also. At this stage, this Court finds it relevant to observe that carrying out an act of enforcement during the middle of the night, that too without the consent of the Petitioners cannot be said that the Rule of law had been duly adhered to. It is the opinion of this Court that acts of demolition/removal cannot be done at night without the affected person's consent or with specific approval from the Magistrate. These safeguards are necessary for maintenance of the Rule of law in a society. Else lawlessness would reign supreme on account of such acts of Statutory Authorities.

15. This Court further finds it relevant to observe that violation of setback is at best a violation of the approved plans or the Building Byelaws. The GMC can only take actions in such regard in accordance with Section 337 of the Act of 1971. The said provision postulates notice, an opportunity of hearing as well as passing of an Order by only the Commissioner of the GMC. Admittedly, no notice was issued. No Order was placed of the Commissioner, GMC. Under such circumstances, the acts on the part of the Respondents are required to be interfered with, with a strong note of disapproval of this Court to the conduct of the erring officials of the Respondent GMC.

16. Accordingly, this Court therefore directs the Respondent authorities, more particularly the Respondent Nos.3 & 4 to forthwith and within 3 (three) days from the date of the instant order restore the said kiosk/shop at the place from where it was removed at the expenses of the GMC Authorities and file an affidavit of compliance within 15 days before the Registry of this Court. This Court further directs the Registry to place the matter before this Court, if such

affidavit is not filed.

17. With the above observations and directions, the instant writ petition stands disposed of.

18. Needles to mention that after due compliance and filing of the affidavit, the Respondent authorities would be at liberty to take such action as permissible under law and by following the mandate of law.

19. Liberty is given to the petitioners to agitate if any damage is caused to the kiosk and its contents mentioned in the additional affidavit before the appropriate forum and if not redressed, liberty is further given to the petitioners to approach this Court.