
(1997) 05 GAU CK 0020
In the Gauhati High Court
Case No : Civil Rule No. 2265 of 1997

Dilip Bhattacharjee

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 20-05-1997

Acts Referred:

Assam Municipal Act, 1956 — Section 159, 159, 296, 296

Citation : (1997) 2 GLJ 71

Hon'ble Judges : B.N.Singh Neelam, J

Bench : Single Bench

Advocate : S.C.Kayal, B.W.Phjva, N.M.Lahiri, B.S.Goyal, N.Choudhary,
Advocates appearing for Parties

Judgement

1. This matter along with Civil Rule No.2264 of 1997, petitioners Sri Dilip Bhattacharjee and Sri Narashingha Paul in this Civil Rule petitions are so preferred by them under Article 226 of the Constitution particularly against the order dated 13.5.97 passed by the Executive Officer, Silchar Municipality cancelling the allotment of the space for stall of the petitioners without affording any opportunity of hearing to them. The copies of the notices so served upon them are also filed for perusal marked as Annexure 3.

2. Heard Mr. NM Lahiri learned senior counsel appearing for the petitioner who submitted that these petitioners alongwith others were allotted stalls by the municipality for running their business long time back in the year 1964 a copy of which is filed marked as Annexure 1 which gives the details of 16 such persons allotted stalls of the measurement and the space so allotted and as far as these two petitioners are concerned their names find place in Annexure 1 at serial No. 12 and 8 respectively. On behalf of the petitioners it is pointed out that petitioners did not encroach the land at the time of reconstruction of the stalls which were so gutted. Even as per the provisions of section 159 of the Assam Municipal Act, 1956 it was incumbent on the part of the respondent as to give an opportunity to the petitioners as to show cause before cancelling such allotment

made to them long time back in the year 1964. In that light hence it is submitted that prior to utilising and taking the service of Magistracy for such demolition which admittedly have not been done within 48 hours as indicated in the notice, a direction be given to the respondents as to give the petitioners an opportunity to show cause with regard to the allegation so made as detailed in the notice. Mr. Lahiri also claims himself to be fortified by a reported case AIR 1964 Assam 80, Pharma Singh vs. Shillong Municipality Board & others. In the background of this reported case two fold argument are so matu firstly before getting the stalls demolished with the help of Magistracy under section 159 of the Act an opportunity is to be given against the proposed order to the petitioners to file show cause and at the same time it was not incumbent on the part of the respondents as to cancel the licences so allotted for the stalls without the petitioners being heard.

3. Mr. Dutta appears on behalf of the respondent Municipality authority and has submitted that there was an allotment of stalls to the petitioners and the others and the stall was gutted by the fire but the petitioners reconstructed the stall without permission and that too encroaching public land disturbing passage to the public ponds etc. Hence there was necessity of issuing the said notice. It is also submitted that under the provisions of section 296 of the Assam Municipal Act, there is efficacious remedy available to the petitioner to approach the State Government being represented by the Commissioner/Deputy Commissioner/or the Sub Divisional Officer get the operation of the impugned notice suspended which can be so done by the said officer and for which they are empowered to do under section 296 of the Assam Municipal Act. In support of this contention on behalf of the respondent also a reported case is cited (1984) 2 GLR 412, Lachit Chandra Singh & others vs. North Lakhimpur Municipal Board & others. The efficacious remedy being very much available, it is pointed out mat instead of filing this writ petition, the petitioners can knock that door. After concluding their arguments both the sides lawyers concede that this matter may not be dragged rather be disposed of at this stage. Alter hearing both the sides lawyers taking into consideration the facts and discussion made above and also after going through tfye reported cafes so cited on behalf of bom the sides, I am of the view that this matter can well be disposed of with certain observation because adjourning the matter will unnecessarily delay the matter. In that light after going through the notice which is under challenge also looking into the provisions of section 159 of the Assam Municipal Act, 1956 with that of particularly reported cases so cited on behalf of the petitioners, AIR 1964 Assam 80 (supra) I find that in the instant case before taking the assistance of the Magistracy for the demolition of the stalls it is incumbent on the part of the respondent as to give an opportunity to the petitioners as to show cause relating to the allegation so made in the said notice. Taking that view respondents are hereby directed as to give a chance by directing the petitioner to show cause. As regards the; reported case so cited by which the otherside lawyer wanted to take help of the provisions of section 296 of this Act, after going through the said section and the reported

case so cited in my considered opinion the provisions of the said section is invoked by the Government on its a own motion. It is hereby directed as also detailed above that since stalls have not been demolished as yet as submitted by the lawyer/for the petitioners, in such circumstance respondents before taking the matter before the Magistrate for demolition shall give the petitioners an opportunity to be heard directing them to show cause and then dispose of the matter according to law.

4. As submitted on behalf of the petitioner that at the first stage at the time of issue of notice under section 159 of the Act, it was not expected for the respondent as to cancel the said allotment without giving any opportunity to the petitioner to be heard such cancellation order shall not be made operative unless disposing of show cause petition to be filed and disposed of by the respondents.

5. In the light of the direction made above both the matters accordingly stand disposed of.