
(2023) 08 GAU CK 0030

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 2475 Of 2020

Kalyan Bhattacharjee

APPELLANT

Vs

Gauhati Municipal Corporation And 4 Ors

RESPONDENT

Date of Decision : 09-08-2023

Acts Referred:

Guwahati Municipal Corporation Act, 1971 — Section 377

Citation : (2023) 08 GAU CK 0030

Hon'ble Judges : Devashis Baruah, J

Bench : Single Bench

Advocate : M. Saikia, A. Upadhyay, S. Bora

Final Decision : Disposed Of

Judgement

1. The instant writ petition has been filed by the Petitioner being aggrieved by the inaction on the part of the Commissioner, Guwahati Municipal Corporation as well as the Chief Executive Officer, Guwahati Metropolitan Development Authority on the ground that the representations so submitted on 24.07.2019 and 02.08.2019 respectively have not been considered by the said Authorities even after the demarcation of the land of the Petitioner by the officials of the Land Revenue Department. It is the further case of the Petitioner that on 04.02.2020, the Petitioner had also submitted another reminder to the Commissioner, GMC for taking necessary action but nothing was done by the Respondent No. 1.

2. This Court have duly perused the representations so submitted by the Petitioner on 24.07.2019, 02.08.2019 as well as on 04.02.2020 to the Respondent Authorities.

3. It further reveals from the records that the Guwahati Municipal Corporation had filed an affidavit-in-opposition through the Joint Commissioner of Guwahati Municipal Corporation on 19th of October, 2020. In the said affidavit-in-opposition, it was mentioned that the demolition as stated in paragraph No. 3 was done almost 33 years back and subsequently if any construction was made

in the patta land of the Petitioner then the same may be demolished by the Petitioner himself. Further to that, it was mentioned that since the demarcation of the land had already been done by the Land Revenue Department, therefore it is open to the Petitioner to clean his plot of land from all or any type of physical structure at his own cost and risk and not by the public authority.

4. To the said affidavit-in-opposition filed by the GMC, an affidavit-in-reply was filed stating interalia that the GMC Authorities have powers under Section 377 of the Guwahati Municipal Corporation Act, 1971 to demolish when such constructions are contravening the provisions of the said Act and the building bye-laws.

5. It further reveals from the records that the private Respondents i.e. the Respondent Nos. 6, 7, 8 & 9 had also filed an affidavit-in-opposition, wherein it was mentioned that there was a demolition made 33 years back to the sanitary tank in the year 1987 and thereupon the private Respondents had constructed the sanitary tank upon their own land. It was further mentioned that the Respondent Authorities i.e. the GMC as well as the Revenue Authorities have no jurisdiction to decide on the question of title inasmuch as if the Petitioner is disputing any right over any portion of the land, the Petitioner has to approach the Civil Court.

6. It further appears that the Petitioner herein had also filed an affidavit-in-reply to the said affidavit-in-opposition filed by the private Respondent Nos. 6, 7, 8 and 9. In addition to that an additional affidavit was filed by the Petitioner wherein an incident relating to the Civil Nazir entering the Petitioner's land was mentioned. In the said additional affidavit certain photographs have been enclosed to show that the boundary pillars which were erected at the time of demarcation carried out earlier by the Revenue Authorities were uprooted by the Civil Nazir.

7. To the said additional affidavit so filed, the Respondent Nos. 6, 7, 8 and 9 had filed an affidavit-in-reply stating interalia that the land of the Respondent Nos. 6, 7, 8 and 9 is situated adjacent to the western boundary land of the Petitioner and his brother and the said land of the Respondent Nos. 6, 7, 8 & 9 is higher than the land of the Petitioner and his brother and there is a pucca boundary wall on the western boundary of the Petitioner and his brother since 1962 and there is no land dispute in between the Petitioner and the Respondent Nos. 6, 7, 8 & 9. It was further mentioned that in Title Suit No. 197/2001 filed by the brother of the Petitioner for permanent injunction to restraint the Respondent Nos. 6, 7, 8 and 9 from creating obstruction in clearing and removing the debris and the wall leaning against their houses, the permanent injunction was granted as prayed for vide the judgment and decree dated 19.01.2004 passed in the said Title Suit and the execution case was filed by the brother of the Petitioner, Shri Ashok Bhattacharjee and he got the writ issued for execution of the decree dated 19.01.2004 by misleading the Court and five pucca boundary posts were erected by the decree holder inside the land of the Respondent Nos. 6, 7, 8 and 9 which

was beyond the scope of the decree and the matter was brought to the notice of the Executing Court by filing a petition. It was further stated that the Executing Court directed the decree holder Shri Ashok Bhattacharjee to remove the five pucca pillars at their own cost and he was also directed to pay exemplary cost of Rs. 10,000/- for taking wrong step of the writ and also for misleading the officer of the Court vide the order dated 21.06.2019 passed by the learned Munsiff No.1, Kamrup(Metro), Guwahati in Title Execution Case No. 4/2014. Further to that, it was also mentioned that the said order dated 21.06.2019 was also upheld by this Court in CRP(IO) No. 272/2019. It was further mentioned that the contents of the additional affidavit as well as the FIR so filed are baseless and not sustainable. It is further seen from a perusal of the Affidavit-in-Reply filed by the Respondent Nos. 6 to 9 to the Additional Affidavit that the sanitary tank and the cantilever alleged to have been constructed on the Petitioner's land was stated to be within the land of the Respondent Nos. 6, 7, 8 & 9 and beyond the sanitary tank and the cantilever there exists a pucca boundary wall on the west from the share of the land of the brother of the Petitioner, Sri Ashok Bhattacharjee.

8. From the above pleadings, it transpires that there are serious disputes as to whether the sanitary tank as well as the cantilever are constructed on the land of the Petitioner or are within the boundary of the Respondent Nos. 6, 7, 8 & 9. It is further relevant to take note of that from a perusal of the writ petition, it is the clear and categorical case of the Petitioner that pursuant to the demarcation so made by the concerned Circle Officer whereby pillars were erected, the Petitioner had submitted certain representations to the Respondent Nos. 1 and 2. It is on account of the inaction on the part of the Respondent Nos. 1 and 2 to take any steps pursuant to the said representations, the Petitioner therefore has approached this Court.

9. This Court is of the opinion that the representations so submitted by the Petitioner needs to be addressed by the Respondent Authorities by giving an opportunity of hearing to the Petitioner as well as the Respondent Nos. 6, 7, 8 & 9. Under such circumstances, this Court disposes of the instant writ petition thereby directing the Respondent No.1, i.e. the Commissioner of the Guwahati Municipal Corporation to decide the representations so submitted by the Petitioner to the said Authority within 13th of September, 2023 by giving an opportunity of hearing to both the Petitioners as well as the Respondent Nos. 6, 7, 8 & 9. This Court further observes that the Commissioner of GMC while deciding the said dispute, shall also duly take note of that if there are serious disputes pertaining to the land between the Petitioner and the Respondent Nos. 6, 7, 8 & 9, it shall only be the Civil Court who can decide the same. However, if there is any violation to the provisions of the Guwahati Municipal Corporation Act, 1971 or the building byelaws, the Commissioner, GMC shall take appropriate steps as deemed fit.

10. The Registry is directed to serve a copy of this order to Mr. S. Bora, the

learned counsel appearing on behalf of the Respondent No. 1 for effective compliance.

11. With the above observations and directions, the instant writ petition stands disposed off.