

(2023) 12 GAU CK 0033

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 7456 Of 2023

M/S By The Way And 2 Ors

APPELLANT

Vs

State Of Assam And 2 Ors

RESPONDENT

Date of Decision : 21-12-2023

Acts Referred:

Constitution Of India, 1950 — Article 226

Gauhati Municipal Corporation Act, 1971 — Section 337A(1), 337(1), 337(2), 337(3)

Citation : (2023) 12 GAU CK 0033

Hon'ble Judges : Manish Choudhury, J

Bench : Single Bench

Advocate : S Sharma, J

Final Decision : Disposed Of

Judgement

1. The writ petition has been instituted under Article 226 of the Constitution of India to assail a notice bearing no. GPL/UC/81/882/2023/412 dated 17.11.2023 issued under the hand of the respondent no. 3.

2. I have heard Mr. S. Sharma, learned counsel for the petitioners and Mr. S. Bora, learned Standing Counsel, GDD & GMC for all the respondents.

3. In order to appreciate the nature of challenge, the contents of the said notice dated 17. 11.2023 are extracted hereinbelow in its entirety :-

OFFICE OF THE GUWAHATI MUNICIPAL CORPORATION

BHANGAGARH - GUWAHATI-781001

GPL/UC/81/882/2023/412 Dated : 17.11.2023

To,

Vintage Cafe & Restaurant

Damayanti Mansion Housing Society

Guwahati – 781001

Whereas, you have carried out erection of an R.C.C. building without adequate

: Md. Tayabulla Road setback area in Vintage Cafe & Restaurant at Damayanti Mansion Housing Society, Guwahati.

A notice asking for documents was served vide letter no. GPL/UC/81/882/2023/412 dated 17.11.2023 in the name of Vintage Cafe & Restaurant. But in response to the notice, Vivek Agarwal, owner of the restaurant has submitted a reply on 18.09.2023, which is not satisfactory. Hence, the notice u/s 337[1] & [2] is now prepared in the name of Vintage Cafe & Restaurant at Damayanti Mansion Housing Society Guwahati.

You are, therefore, directed to discontinue the undertaken works of erection or re-erection of occupying the setback area of the building at Damayanti Mansion Housing Society, Guwahati forthwith at your own cost and to submit report within 07 [seven] days as to why the unauthorized construction should not be demolished/sealed.

If you do not submit any explanation as demanded above or if the explanation submitted is found unsatisfactory, the Guwahati Municipal Corporation would be free to proceed under Section 337 [3] & 337 [A] [1] of G.M.C Act, 1971 to demolish/seal the unauthorized Construction as mentioned in Schedule.

SCHEDULE-A

1. Nature of Construction

Ground Floor Construction of vinyl Cafe & Restaurant Damayanti Mansion Housing society

2. Location of Construction

[a] Name of Road

Damayanti Mansion Housing Society

Md. Tayabulla Road

3. Nature of unauthorized

Usage of Building set back area for commercial purpose of Vintage Cafe & Restaurant

Commissioner

Guwahati Municipal Corporation

Guwahati

4. Mr. Sharma, learned counsel for the petitioners has submitted that the petitioners were neither the builder nor the owner of the premises and as such,

there cannot be any question of demolishing any unauthorized part of the construction by the petitioners. The petitioners have taken the premises only on rent from the owner of the premises to run a cafe & restaurant by the name of Vintage Cafe & Restaurant. By referring to the contents of the notice, Mr. Sharma has contended that the show cause notice is vague and ambiguous inasmuch as by the show cause notice, the petitioners have been asked to submit explanation as to why the unauthorized construction, mentioned in the schedule, should not be demolished or sealed.

5. In response, Mr. Bora, learned Standing Counsel, GMC appearing for the respondents, has submitted that from the text and tenor of the notice, it is evident that the petitioners have been served with the notice in respect of alleged unauthorized act, "Uses of Building setback area for commercial purpose of Vintage Cafe & Restaurant". He has further submitted that the law as regards interference with a show cause notice is well settled and since the petitioners have already submitted their reply in response to the show cause notice dated 17.11.2023, the respondent authorities would consider the said reply qua the show cause notice as regards the unauthorized act, "Uses of Building setback area for commercial purpose of Vintage Cafe & Restaurant", in accordance with law.

6. I have considered the submission of the learned counsel for the parties and have also gone through the contents of the show cause notice, which have been extracted above.

7. By issuance of a show cause notice, the noticee is asked to respond to the proposed action. It is not a case that the authority issuing the show cause notice, that is, the GMC lacks jurisdiction to issue such a show cause notice. The show cause notice has been issued under the provisions of Section 337[1][2] and Section 337[2] of the Guwahati Municipal Corporation Act, 1971 and the authority and jurisdiction to issue such show cause notice has not been challenged. Had it been the case, the writ petitioner would have well within its right to maintain the writ petition and to challenge the show cause on that ground and this Court in that event could have the opportunity examine the legality and validity of the show cause notice. In the absence of any challenge, this Court should not embark to examine the issue. With the issuance of show cause notice, the rights and obligations of the parties have not been decided finally. The event of issuance of a show cause notice is a step towards taking a final decision in the matter by the competent authority. A tentative view, if any, taken in the process cannot be deemed to be the final view taken in the matter. The final view will be dependent upon the response received from the noticee and if the noticee is able to show sufficient cause as to why no action contemplated under the show cause notice should be taken the final view may altogether be different. It is for the aforesaid reasons, the extra-ordinary and discretionary jurisdiction under Article 226 of the Constitution of India is ordinarily not invoked at the stage of issuance of show cause notice because it is

only against the final decision, not against a tentative view, the power of judicial review is exercisable. The position has been well settled by a catena of decisions of the Hon'ble Supreme Court of India in *Chahan Singh vs. Registrar, Co-operative Societies, Punjab and others*, reported in [1976] 3 SCC 361; *State of U.P. vs. Brahm Datt Sharma*, reported in [1987] 2 SCC 179; *Executive Engineer, Bihar State Housing Board vs. Ramesh Kumar Singh*, reported in [1996] 1 SCC 327; *Ulagappa vs. Divisional Commissioner, Mysore*, reported in [2001] 10 SCC 639; *Special Director vs. Mohd. Ghulam Ghouse*, reported in [2004] 3 SCC 440; *Siemens Ltd. vs. State of Maharashtra and others*, reported in [2006] 12 SCC 33; and *State of Orissa and others vs. Mesco Steels Limited and another*, reported in [2013] 4 SCC 340.

8. Mr. Bora, Standing Counsel, GMC has submitted that the show cause notice has been served upon the petitioners only to take a decision as regards the alleged unauthorized act "Uses of Building setback area for commercial purpose of Vintage Cafe & Restaurant", and as such, the final decision will be confined to on that aspect only. He has submitted that if the setback area is found to be unauthorizedly constructed, then it is the owner of the premises who is to be put on notice. He has further submitted that the proceedings initiated by the show cause notice dated 17.11.2023 has not been concluded in the form of a speaking order till date.

9. Having regard to the above fact situation obtaining in the case, this Court is of the considered view that apart from the reply submitted in response to the show cause notice, the petitioners should also be afforded an opportunity of personal hearing to represent their case, before the authority before passing of any final decision on the subject. Mr. Bora, learned Standing Counsel, GMC has submitted that such opportunity of personal hearing can be given to the petitioners on 27.12.2023 and the matter is being dealt with by the Commissioner, GMC. Having regard to the said submission of Mr. Bora, it is observed that the petitioners shall appear before the Commissioner, GMC at 11-00 a.m. on 27.12.2023 at his office. It is further observed that after completion of such hearing, the Commissioner, GMC shall bring the proceedings initiated by the show cause notice dated 17.11.2023 to its conclusion in the form of a speaking order. The speaking order to be passed, shall be communicated to the petitioner no. 1 immediately thereafter, as in the event the final decision is against the petitioners, it is the petitioners who are likely to be visited with adverse consequences. It is also observed that the petitioners are at liberty to avail appropriate remedy, as permissible under the law, if they find any cause to agitate against the speaking order to be passed by the Commissioner, GMC. It is also made clear that the proceedings initiated by the show cause notice dated 17.11.2023 shall only confine to the subject of alleged violation, that is, "Uses of Building setback area for commercial purpose of Vintage Cafe & Restaurant".

10. This order disposes of the writ petition. No cost.