
(1997) 08 GAU CK 0033
In the Gauhati High Court
Case No : Civil Rule No. 1440 of 1995

Rampal Joshi

APPELLANT

Vs

The State of Assam and Others

RESPONDENT

Date of Decision : 14-08-1997

Acts Referred:

Assam Municipal Act, 1956 — Section 183, 296, 307, 308, 309
Constitution of India, 1950 — Article 226

Citation : (1998) 1 GLT 5

Hon'ble Judges : A.K. Patnaik, J

Bench : Single Bench

Advocate : A.K. Bhattacharyya, C. Choudhury, C. Das and G. Choudhury, for the Appellant; R. Gogoi and A. Roy, for the Respondent

Judgement

A.K. Patnaik, J.—In this application under Article 226 of the Constitution, the Petitioner has prayed for quashing the order dated 30.3.95 passed by the Tezpur Municipal Board and for issuance of a writ of Mandamus on the Respondents forbearing them from demolishing the building occupied by the Petitioner as a tenant for the purpose of his business and residence in pursuance of the said order dated 30.3.95.

2.The facts briefly are that the Petitioner is a tenant under the Respondents Nos. 4 and 5 in respect of a portion of the building standing on the land under periodic patta Nos. 769(New)/310(Old) of Tezpur town bearing Municipal Holding No. 1335 of Ward No. 6 of the Tezpur Municipality. Besides the Petitioner there are four other tenants in the said building belonging to the Respondent Nos. 4 and 5. The Chairman of the Tezpur Municipal Board, issued a notice dated 21.7.94 to the Respondent No. 4 stating therein that the aforesaid building under Holding No. 1335 of Ward No. 6 of Tezpur Municipality was not fit and safe for dwelling purpose and directing him to demolish the building immediately failing which the Tezpur Municipal Board would be compelled to take drastic action u/s 183 of the Assam Municipal Act, 1956, (for short, "the Act, 1956"). Coming to learn of the

said notice dated 21.7.94, one Sri Dependra Joshi, the constituted Attorney of the Petitioner, submitted a representation dated 3.9.94 before the Deputy Commissioner, Tezpur, alleging therein that the Respondents Nos. 4 and 5 have been harassing the Petitioner by adopting unlawful pressure tactics and have surreptitiously obtained an order from the Tezpur Municipal Board for demolition of the building, and making a prayer for suspending the said order for demolition u/s 296 of the Act, 1956. When the said representation of the Petitioner was not considered, he filed Civil Rule No. 3471/94 before this Court and this Court while issuing Rule on 5.9.94 directed that pending disposal . of the Rule, the said notice dated 21.7.94 issued by the Chairman, Tezpur Municipal Board would stand suspended. Thereafter, the Civil Rule was heard and disposed of by judgment and order dated 1.3.95 by this Court setting aside the said notice dated 21.7.94 and directing the Tezpur Municipal Board to make a fresh inspection after giving 10 days" notice to the Petitioner and other tenants who were in occupation of the building and the owners fixing the date and time for joint inspection with the help of experts, and thereafter to take a decision as to whether any action as contemplated u/s 183 of the Act could be taken. In the said judgment and order dated 1.3.95 the High Court further directed that the directions must be complied within a month and observing that the parties would extent full co-operation to the Tezpur Municipal Board in taking a decision in the case. The Petitioner's grievance is that despite the aforesaid directions of the Court in the said judgment and order dated 1.3.95 in Civil Rule No. 3471/94 to make a fresh inspection with the help of the experts after giving notice to all the tenants of the building in question including the Petitioner, a fresh order has been passed by the Tezpur Municipal Board on 30.3.95 behind the back of the Petitioner directing the Respondent No. 4 to demolish the building, if necessary, by taking police "help. In pursuance of the said order, the Respondent No. 5 alongwith other members of the family and with the help of 30/40 hired hands have resorted to demolition of the building including the residential house of the Petitioner on 2.4.95. When the present Civil Rule was moved before this Court on 4.4.95, this Court while issuing Rule passed an interim order directing that the building in which the Petitioner is carrying on business under the name and style M/s Uzala shall not be demolished.

3. An affidavit-in-opposition has been filed on behalf of Respondents 4 and 5 stating, inter alia, that pursuant to the judgment and order dated 1.3.95 passed by this Court in Civil Rule No. 3471/94, notices for joint inspection were issued by the Tezpur Municipal Board on 15.3.95 to the all tenants as well as the Respondent No. 4 by Registered Post intimating them that a joint inspection by experts would be conducted in respect of the building on 27.3.95 at 10.30 a.m. and requesting them to be present on that date. In the said affidavit-in-opposition, it has been categorically stated that the notice on the writ Petitioner was issued to his constituted Attorney Sri Dipendra Joshi as the writ Petitioner was residing in Delhi at that point of time. In the affidavit-in-opposition, it has further been stated that on 27.3.95 a fresh joint inspection of the building in

question was carried out in the presence of the Landlord and all the tenants including the writ Petitioner who was represented by his wife, Smti. Puspa Joshi, and his son, Birendra Joshi, and thereafter an inspection report was submitted by the Executive Engineer, P.W.D. (Tezpur Building Division) to the Chairman, Tezpur Municipal Board, and the Chairman of the Tezpur Municipal Board then sent the same to the Additional District Magistrate for his views and after getting the views of the Additional District Magistrate, the Chairman, Tezpur Municipal Board issued the notice dated 30.3.95 to the Respondent No. 4 directing him to demolish the building in question. In the said notice dated 30.3.95, it has further been stated that copies of the same be sent to all the tenants occupying the building. Accordingly, the Respondent Nos. 4 and 5 started demolishing the building on 2.4.95 at 9.00 a.m. after giving sufficient time to all the tenants to suitably vacate the building and remove their belongings. But after about 4 hours, the constituted Attorney of the Petitioner produced before the authority present at the demolition site an order of the Deputy Commissioner staying the demolition which was passed by the Deputy Commissioner on the basis of a petition filed by the said constituted Attorney of the Petitioner. On 3.4.95, the Respondents 4 and 5 represented to the Deputy Commissioner when he summoned both the parties to appear before him on 4.4.95 and on 4.4.95 the Deputy Commissioner passed an order withdrawing the stay order that had been passed by him on 2.4.95 and allowing the Tezpur Municipal Board to take necessary action as per the directions of the High Court. The Respondents 4 and 5 have alongwith their affidavit-in-opposition filed Xerox copies of receipts granted by the Postal Department to show that they have despatched the notices by Register post with A/D to all the five tenants of the building including Sri Dipendra Joshi, the constituted Attorney of the Petitioner.

4. An affidavit- in-reply has been filed by the Petitioner stating therein that no notice whatsoever was served by the Respondent No. 3 prior to demolition of the premises, and further stating that no joint inspection/verification as claimed by the Respondents Nos. 4 and 5 in their affidavit-in-opposition has ever been made at any point of time, and denying that the members of the family of the Petitioner were present at the time of joint inspection/verification of the premises. With regard to the notice dated 15.3.95 said to have been sent by the Respondent No. 3 to all the tenants of the building, it has been stated in the said affidavit-in-reply that there was nothing on record to show that notice dated 15.3.95 was actually served on the Petitioner. Regarding notice dated 30.3.95, it has been stated in the affidavit-in reply that notice was sent by the Respondent No. 4 to the constitute Attorney of the Petitioner on 31.3.95 through Registered post, but the backside of the envelope shows that the notice could not be delivered to the Petitioner or his constituted Attorney on 3.4.95 and 4.4.95 and the same was delivered only on 5.4.95 when the demolition of the building was already over.

5. At the hearing, Mr. A. K. Bhattacharyya, learned Counsel appearing or the Petitioner, vehemently contended that by the judgment and order dated 1.3.95

passed in Civil Rule No. 3471/94, this Court held that notice u/s 183 of the Act, 1956 has to be served on the occupier before taking any action thereunder for demolition. Hence before any action could be taken u/s 183 of the Act, 1956, it was incumbent upon the Respondent No. 3, Tezpur Municipal Board, to serve the notice on the Petitioner who was the occupier of a portion of the building sought to be demolished. He further submitted that Sections 307 to 309 of the Act, 1956, laid down the procedure for service of any notice under the Act. He contended that the Tezpur Municipal Board has not complied with the aforesaid mandatory provisions of Sections 183, 307 to 309 of the Act, 1956 before resorting to demolition of the building in question. He further argued that the language of the notice dated 30.3.95 would show that the Respondent No. 4 was asked to demolish the building and to send a copy of the said notice dated 30.3.95 to all tenants occupying the building. In other words, notice of demolition was sought to be served on the tenants occupying the building including the Petitioner through the Respondent No. 4 which was not permissible under the law. According to Mr. Bhattacharyya, the provisions of Section 183 read with Sections 307 to 309 of the Act, 1956, warranted that a notice was served directly by the Tezpur Municipal Board on all the occupants of the building including the Petitioner. In support of his aforesaid submission, Mr. Bhattacharyya, relied on the judgment of the Supreme Court in the case of State of Jammu and Kashmir and Others Vs. Haji Wali Mohammed and Others, where the Supreme Court held that the action taken by the Municipality in a matter of demolition was entirely illegal and contrary to law owing to non-compliance of the provisions of Sections 239 and 238 of the J&K Municipality Act. Mr. Bhattacharyya pointed out that the aforesaid decision of the Supreme Court would further show that reasonable time was to be given to the occupier of the building before demolition was to be taken up, and in the present case the notice of demolition was issued on 30.3.95 which was a Thursday, 31.3.95 and 1.4.95 were Friday and Saturday respectively and 2.4.95 was a Sunday on which the demolition started. Hence no reasonable notice was given to the occupants of the building for demolition. Mr. Bhattacharyya also cited a judgment of Calcutta High Court in the case of Bakul Behari Roy Vs. Corporation of Calcutta and Another, , wherein a Full Bench of the Calcutta High Court held that service of a notice under Proviso (a) to Section 363(1) of the Calcutta Municipal Act, 1923, was to be effected in the mode laid down in Section 504. He also referred to a well-settled proposition of law reiterated in the case of Hukam Chand Shyam Lal Vs. Union of India (UOI) and Others, , that where a power is required to be exercised by a certain authority in a certain way, it should be exercised in that manner or not at all, and all other modes of performance are necessarily forbidden. Mr. Bhattacharyya submitted that since the mode for exercising the power of demolition and service of notice for demolition as prescribed in Section 183 and Sections 307 to 309 of the Act, 1956, have not been followed by the Tezpur Municipal Board, in the facts of the present case, the Court must quash the notice dated 30.3.95 for demolition and grant consequential relief to the Petitioner. Mr. Bhattacharyya submitted that since in the present case a portion

of the building under the occupation of the Petitioner has already been demolished pursuant to the aforesaid illegal notice/order of demolition dated 30.3.95 of the Tezpur Municipal Board, appropriate relief that should be granted by the Court is to restore the Petitioner back to the premises proposed to be newly constructed by the Respondents Nos. 4 and 5 and to compensate him adequately for the loss that the Petitioner has suffered.

6. Mr. A. Roy, learned Counsel appearing for the Respondent No. 3, Tezpur Municipal Board, on the other hand, submitted that by the judgment and order dated 1.3.95 passed in Civil Rule No. 3471/94, this Court has already held that a notice is to be given to the occupier of the building sought to be demolished before any decision is taken by the Municipal Board to demolish the same so that the occupier also gets an opportunity to show cause or persuade the authority not to dismantle the house or building and it is for this reason that by the said judgment and order dated 1.3.95 this Court set aside the earlier Notice dated 21.7.94 issued by the Chairman, Tezpur Municipal Board and directed the Municipal Board to make a fresh inspection after giving 10-days "notice to the Petitioner, other tenants who were in occupation of the building and the owners fixing the date and time for joint inspection with the help of experts. Mr. Roy produced the records of the Tezpur Municipal Board to show that in accordance with the said judgment and order dated 1.3.95 of this Court a notice was sent by Registered Post with A/D on 15.3.95 from the Chairman, Tezpur Municipal Board to the constituted Attorney of the Petitioner, Sri Dipendra Joshi, stating therein that a joint inspection of the building would be held on 27.3.95 at 10-30 a.m. and that he should be present at the site. But the said registered notice contained in the registered envelope was returned with an endorsement that on 21.3.95 the addressee was absent. The registered envelope would further show that the Postman attempted to serve the said registered notice on Sri Dipendra Joshi several times on 22.3.95, 23.3.95 and finally on 27.3.95 but failed to serve the said notice. The Postman made an endorsement on 19.4.95 on the registered envelope that the addressee refused to receive the notice and accordingly returned the same to the sender. Mr. Roy submitted that the record would show that the joint inspection did take place on 27.3.95 and a report was submitted by the Executive Engineer, P.W.D (Tezpur Building Division) to the Chairman of Tezpur Municipal Board to the effect that the building was not fit for human inhabitation and on the basis of the said report the Chairman of Tezpur Municipal Board passed orders on 30.3.95 directing the Respondent No. 4 to demolish the building in question. Mr. Roy contended that once a decision was taken by the Chairman of Tezpur Municipal Board to demolish the building no further notice was required to be given to the Petitioner who was one of the occupiers of the building and considering the nature of the work to be executed, the owner of the building, namely, Respondent No. 4, was directed to demolish the building by a notice in accordance with Section 310 of the Act, 1956. Mr. Roy further contended that in the case of State of J&K v. H. W. Mohammed (Supra) cited by Mr. A. K. Bhattacharyya, learned Counsel for the Petitioner, there were materials

before the Court of collusion between the Municipality and the Deputy Commissioner, but no material has been placed before the Court to show any collusion between the Tezpur Municipal Board and the Respondents Nos. 4 and 5, and thus, the facts of the present case are distinguishable from that of *State of J&K v. H.W. Mohammed* before the Supreme Court.

7. Mr. R. Gogoi, learned Counsel appearing for the Respondents 4 and 5, relied on the categorical averments made in the affidavit-in-opposition filed on behalf of Respondents 4 and 5 that the representatives of the Petitioner, namely, his wife and son were present at the time of joint inspection. He further contended that so far as demolition was concerned, when Respondents Nos. 4 and 5 started demolition on 2.4.95, the Deputy Commissioner suspended the demolition and thereafter heard the Petitioner as well as Respondents 4 and 5 and only thereafter vacated the earlier stay order passed by him on 4.4.95. He further contended that Annexure-"A" to the affidavit-in -reply would show that the constituted Attorney of the Petitioner avoided receipt of the notice dated 30.3.95 of the Chairman, Tezpur Municipal Board sent by the Respondent No. 4 by Registered post with A/D and received the same only on 5.4.95 after the Deputy Commissioner passed order dated 4.4.95 vacating the stay order. Mr. Gogoi further submitted that an offer for providing some accommodation in the new building proposed to be constructed in place of old building was made by the Respondents Nos. 4 and 5 In this Court, but the Petitioner did not accept the said offer. Mr. Gogoi relied on a judgment of the Supreme Court in the case of *Nilkantha Shidramappa Ningashetti Vs. Kashinath Somanna Ningashetti and Others*, for the proposition that notice need not be served in writing and can also be given orally. Relying on the said decision, Mr. Gogoi stated that in the present case the Petitioner who had in fact knowledge that a joint inspection was actually carried out in presence of the tenants of building as well as the owners of the building on 27.3.95, cannot now be allowed to take a stand before this Court that no notice as such was served on him in accordance with Sections 183, 307 to 309 of the Act, 1956. According to Mr. Gogoi since the Petitioner had actual knowledge of the aforesaid joint inspection as well as demolition as would be evident from the facts on record, the writ petition may be dismissed.

8. The question to be decided in the present case is as to whether the provisions of Sections 183, 307 to 309 and 310 of the Act, 1956 have been complied with for the purpose of demolition of the building in question. The Petitioner came before this Court in the earlier Civil Rule No. 3471/94 contending that before any action for demolition was carried out u/s 183 of the Act, 1956, a notice was required to be served on the Petitioner who was one of the occupiers of the building in question. this Court while disposing of the said Civil Rule held in its judgment and order dated 1.3.95 thus:

...Section 183 of the Assam Municipal Act, 1956, (for short, the Act) provides that a Board may require by a notice on the owner or occupier of any land or building to demolish, secure or repair within the time mentioned from the date of

service of the notice in such manner as it deems necessary any building or portion of a building, wall or other structure which appears to the Board to be in a ruinous condition or dangerous to inmates, passers by or other property. Here the notice was issued by the Respondent No. 3 to the Respondent No. 4. However, from the record it does not appear that the notice was issued to the occupier. The Petitioner has denied receipt of any such notice before the proposed action. The very purpose of issuing a notice to the owner or occupier of any building is to give an opportunity to show cause or persuade the authority not to dismantle the house or building. Here in this case the affected person will be the occupier who is in possession of the building using the same as his dwelling house as well as for his commercial purpose. Therefore, in my opinion, notice to the occupier is necessary before taking a decision regarding demolition, etc. Reports shown in Annexures-R2 and R3 of the affidavit-in-opposition may be correct. The building may be in dilapidated condition and may not be suitable for human habitation, but that in my opinion is not enough. Before taking any action, occupier must also be given a notice. As this was not done, I am of the opinion that the action cannot be said to be in accordance with the established principles of law. Therefore, I set aside the Annexure-C notice and direct the Board to make a fresh inspection after giving 10 days' notice to the Petitioner, other tenants who are in occupation of the building and the owners fixing date and time for joint inspection and after joint inspection with the help of experts, the Board may come to a decision as to whether action as contemplated u/s 183 can be taken. This must be done within a month from today. It is hoped that the parties shall extend full cooperation to Respondent No. 3 in taking a decision in the case....

In the aforesaid judgment, therefore, this Court held that the very purpose of issuing a notice to the owner or occupier of any building is to give an opportunity to show cause or persuade the authority not to dismantle the house or building and since before the earlier notice dated 21.7.94 was issued by the Chairman, Tezpur Municipal Board for demolition of the building no notice had been given to the Petitioner who was one of the occupiers of the said building, the Court set aside the said notice and directed the Tezpur Municipal Board to make a fresh inspection after giving 10 days' notice to the Petitioner, other tenants who were in occupation of the building and the owners of the building fixing the date and time for joint inspection with the help of experts, and observed that thereafter the Board may come to a decision as to whether action as contemplated u/s 183 can be taken and that the directions given in the said judgment must be done within a month from 1.3.95.

9. The real question in dispute in the present case is as to whether pursuant to the aforesaid judgment and order dated 1.3.95 of this Court in Civil Rule No. 3471/94, a notice was given to the Petitioner in accordance with the provisions of Sections 307 to 309 of the Act, 1956. Sections 307 to 309 of the Act 1956, are quoted herein below:

307. How notice, etc., may be served.-(1) Every notice, bill, form, summons or notice of demand under this Act may be served personally on or presented to the persons to whom the same is addressed;

or be left at his usual place of abode with some adult male member or servant of his family;

or, if it cannot be so served, presented or delivered, may be put on some conspicuous part of his place of abode, or of the land, building or other thing in respect of which the notice, bill, form, summons or notice of demand is intended to be served or may be sent by post in a registered cover.

(2) Every such notice, bill form, summons or notice of demand shall be signed by or bear a facsimile signature of the Chairman, Vice-Chairman or any other officer authorised by the Chairman in that behalf.

308. Reasonable time for compliance to be fixed.- When any notice under this Act requires any act to be done for which no time is fixed by this Act, the Board shall fix a reasonable time for doing the same.

309. Service of notice on owner or occupier of land. - When any notice is required to be given to the owner or to the occupier, or the owner and the occupier of any land, such notice, addressed to the owner or occupier or both, as the case may require, may be served on the occupier of such land, or otherwise in the manner mentioned in Section 307....

The language of the underlined portion of Section 309 of the Act, 1956, would show that when any notice is required to be given to the owner or to the occupier, it may be addressed to owner or occupier in the manner mentioned in Section 307, and the underlined portion of Section 307 quoted above would show that one of the modes in which a notice may be given to a person is by sending the same by post in a registered cover. What Section 307 requires therefore is that the notice be sent by post in a registered cover to the addressee and not that it be actually served on the addressee. Section 307 however, makes it clear that this mode of sending the notice in a registered cover to the addressee is to be adopted where the notice cannot be served by the other modes of service given in the first two paragraphs of Section 307. But in a case where a Municipal Board sends a notice in a registered cover to the occupier, the Court cannot hold that the provisions of Sections 307 and 309 of the Act, 1956, have been contravened unless the Court comes to a definite finding that the notice could have been served on the occupier in the mode prescribed in the first two paragraphs of Section 307 in the facts and circumstances of the case.

10. Coming now to the facts of the present case, from the records of the Tezpur Municipal Board, it is clear that the following notice dated 15.3.95 was addressed by the Chairman, Tezpur Municipal Board to Sri Dipendra Joshi, the constituted Attorney of Sri Ram Pal Joshi, Prop: M/s Uzala, Main Road, Tezpur:

Dear Sir,

The Hon''ble Gauhati High Court desires that a joint inspection of the building under holding No. 1335 of Ward No. 6 of this town should be jointly inspected again with intimation to you before action u/s 183 of Assam Municipal Act of 1956 is taken.

You are therefore, requested to be present at the site on 27.3.95 at 10-30 a.m.

Yours faithfully, Sd/- H.N. Barthakur Chairman Tezpur Municipal Board Tezpur, Sonitpur, Assam.

It is also clear from the record that the aforesaid notice was despatched by Registered post with A/D from the Tezpur Municipal Office on 15.3.95. Since the joint inspection as per notice was to take place on 27.3.95 at 10-30 a.m. more than 10-days'' time was granted by the said notice despatched on 15.3.95 to the constituted Attorney of the Petitioner, Sri Dipendra Joshi to be present in the joint inspection on 27.3.95. The registered envelope containing the said notice was returned with endorsements of the postman that the addressee was absent on 21.3.95 and 23.3.95. There are also endorsements on the registered cover available on the record to show that attempts were made by the post peon on 22.3.95 and 27.3.95 also to serve the notice on the addressee, but he failed to serve the same. Finally, on 19.4.95, the registered envelope was returned with endorsements which indicate that the addressee refused to receive the registered cover. Admittedly, the Petitioner was away from Tezpur during March, 1995, when the aforesaid notice was sent and the aforesaid facts show that the constituted Attorney of the Petitioner was either not available at the address or was avoiding the notice. On these facts, it is difficult for this Court to hold that notice on the Petitioner or his constituted Attorney could have been served in the mode prescribed by the first two paragraphs of Section 307 of the Act, 1956 and that the mode of sending the notice in a registered cover to the constituted Attorney of the Petitioner at the address of the Petitioner was in breach of the provisions of Sections 307 and 309 of the Act, 1956.

11. Regarding the contention of Mr. Bhattacharyya, learned Counsel for the Petitioner, that the Tezpur Municipal Board did not send the notice dated 30.3.95 directing demolition of the building to the Petitioner or his constituted Attorney, it is clear that this Court in its earlier judgment and order dated 1.3.95 in Civil Rule No. 3471/94 held that a notice was required to be served only before a decision was taken by the Tezpur Municipal Board for demolition u/s 183 of the Act, 1956. The aforesaid judgment and order dated 1.3.95 in Civil Rule No. 3471/94 nowhere holds that once a decision is taken by the Tezpur Municipal Board to demolish the building u/s 183 of the Act, 1956, a further notice is required to be given to the occupier of the building such as the Petitioner. Once a decision is taken by the Tezpur Municipal Board to demolish the building in question, Section 310 of the Act, 1956, provides that requisition is to be sent to the owners or the occupiers who are required to execute the work or to do the work. Section 310 is quoted herein below:

310. Procedure when owners or occupiers are required by Board to execute works.- Whenever it is provided in this Act that the Board, or the Board at a meeting may require the owners or the occupiers, or the owners and occupiers, of any land to execute any work or to do anything, such requisition shall be made, as far as possible, by a notice to be served as provided in Sections 307 and 309 on every owner or occupier who is required to execute such work or to do such thing; but if there be any doubt as to the persons who are owners or occupiers, such requisition may be made by a notice to be posted upon or near the spot at which the work is required to be executed or the thing done, requiring the owners or the occupiers, or the owners and occupiers, of any land to execute such work or to do such thing within a specified time, and in such notice it shall not be necessary to name the owners or occupiers.

Every requisition as aforesaid shall give notice to the persons to whom it is addressed that, if they fail to comply with the requisition or to prefer an objection against such requisition as provided in the next succeeding section the Board will enter upon the land and cause the required work to be executed or the required thing to be done and that in such case the expenses incurred thereby will be recovered from the persons who are required in such requisition to execute such work or do such thing.

Since in the present case the building owned by the Respondents Nos. 4 and 5 was to be demolished, the notice dated 30.3.95 was required to be given to the Respondent Nos. 4 and 5 to demolish the building. It appears that in the impugned notice dated 30.3.95, the Respondents Nos. 4 and 5 were asked to inform the occupiers of the building and the said Respondents appear to have sent the intimation to the constituted Attorney of the Petitioner by registered post as would be evident from the copy of the postal receipt annexed to the affidavit-in-opposition filed on behalf of the Respondents 4 and 5.

12. Thus none of the provisions of Sections 183, 307 to 309 of the Act, 1956, has been violated by the Tezpur Municipal Board in the facts of the present case. The decision of the Supreme Court in the case of State of J & K v. H.W. Mohammed (Supra) in which the Supreme Court clearly found that the mandatory provisions of the J&K Municipal Act were not complied with does not apply to the facts of the present case. The impugned order dated 30.3.95 of the Chairman of the Tezpur Municipal Board is therefore not liable to be quashed. In case, however, the Petitioner is aggrieved by the fact that he was not given reasonable time to remove his belongings from his house or the shop, or, is of the view that he is entitled to restoration to equivalent area in the building to be newly constructed by the Respondents Nos. 4 and 5, then the remedy of the Petitioner is against the said Respondents Nos. 4 and 5 in the appropriate civil Court and not in this writ petition.

13. In the result, this writ petition has no merit and is accordingly dismissed. The interim order passed by this Court on 4.4.95 stands vacated. However, considering the entire facts and circumstances of the case, the parties shall bear

their own costs.

The rule is discharged.