
(1988) 03 GAU CK 0003
In the Gauhati High Court
Case No : Civil Rule No. 1340 of 1986

Ratan Dutta and Another	Vs	APPELLANT
State of Assam and Others		RESPONDENT

Date of Decision : 30-03-1988

Acts Referred:

Assam Municipal Act, 1956 — Section 296, 296

Citation : (1988) 2 GLR 168

Hon'ble Judges : R.K.Manisana Singh, J and T.C.Das, J

Bench : Division Bench

Advocate : R.Baruah, D.N.Choudhury, D.N.Baruah, B.P.Borah, A.Roy, A.K.Maheswari, Advocates appearing for Parties

Judgement

Das, J.—The two writ petitioners Shri Ratan Dutta and Shri Manish Kar Purkayastha have impugned the order dated 18th November, 1986 passed by the Subdivisional Officer (Civil) at Tinsukia in purported exercise of power under Section 296 of the Assam Municipal Act, 1956 thereby prohibiting the Executive Officer, Doom Dooma Town Committee from execution of the allotment order granted in favour of the petitioners and others. On or about 20.2.85 the Chairman, Doom Dooma Town Committee called for tenders for allotment of 15 shop rooms of the proposed building to be constructed by the Doom Dooma Town Committee in Doom Dooma Town. Both the petitioners along with others submitted tenders for such allotment. The tenders were accompanied by a security deposit of Rs. 2000/ each. The tenders were duly opened in the office of the Chairman, Doom Dooma Town Committee in presence of the concerned persons. It was found that the petitioner No. 1 was the highest bidder in respect of Room No. 8 and the petitioner No. 2 for Room No. 12. The petitioner No. 1 quoted Rs. 66,101/. in his tender for room No. 8 and petitioner No. 2 quoted Rs. 45,000/ in his tender for room No. 12. Having found suitable, both the petitioners' tenders were considered and petitioner No. 1 and 2 were allotted Room Nos. 8 and 12 respectively by orders of the Chairman of the Doom Dooma Town Committee as per Annexures V & VI respectively annexed to the petition.

The petitioners were directed to deposit 50% of the bid money and they did accordingly. The orders of allotment (Annexures V & VI) are dated 25.5.85. The Doom Dooma Town Committee issued receipts acknowledging receipt of payment of 50% of bid money from both the petitioners. The receipts are enclosed as Annexures VII & VIII to the petition. Thereafter the trouble started when a petition was filed by the Doom Dooma Circle Students' Union to the Subdivisional Officer (Civil) Tinsukia, respondent No. 2. The petition was taken up for hearing by respondent No. 2 on 21.10.86 on which date it was heard and subsequently the impugned order was passed on 18.11.86. It is stated in the order that the allottees were also heard while taking up the hearing of the petition against such allotment. The petitioners have challenged this order also on the ground that no notice was issued upon them nor they were given any opportunity of being heard by respondent No. 2 when the petition against allotment was taken up for bearing. It is further stated by the petitioners that prior to cancellation of the allotment no notice was issued to the petitioners either to show cause or to appear before the respondent No. 2 on facts also the petitioners have challenged this impugned order.

2. Mr. D. N. Choudhury learned counsel for the petitioners has challenged the order mainly on the ground that respondent No. 2 had no jurisdiction to pass the impugned order purportedly acting under the provisions of Section 296 of the Assam Municipal Act, 1956 (for short, "the Act"). The sole point as urged by the learned counsel is that the power under Section 296 of the Act can be exercised in case of extraordinary exigencies OF emergent situation. In the above context Mr. Choudhury has referred to a decision of this Court in *Municipal Board, Sibsagar vs. The Secy, to Govt. of Assam, Municipal Admn. Dtppt., Dispur and Others* as reported in (1983) 3 GLR 63. It was observed in paragraph 2 of the said judgment as under :

¶2. It will be seen on a bare perusal of the amended section 296 of the Act that this extraordinary power has been granted to meet extraordinary exigencies or emergent situations. Before entertaining an application u/s. 296 of "the Act" it is essential for the authorities to peruse the order or the resolution of the Board bearing in mind that a Board is an elected body, which has been endowed with statutory powers to perform public duties by the legislature. It is an authority. When an order or resolution passed by the Board militates against the fundamental right conferred by Part III or the State policy on the Directive principles laid down in Part IV of the Constitution or it is in excess of power conferred by law on the Board or if the execution of the resolution or order for the doing of an act directed to be done by Board is likely to lead to a serious breach of the peace or likely to cause serious injury or annoyance to tie public or to any class or body of persons, the authorities may intervene u/s. 296. These are conditions precedents to exercise powers u/s. 296. Therefore, before entertaining an application u/s 296 of "the Act" it is essential for the authority to reach a tentative finding that the complaint made against the decision or order or resolution of the Board suffer from constitutional infirmities and/or are likely

to lead to serious breach of the peace or are likely to cause serious injury or annoyance to the public or to any class or body of persons."

We do not find any indication in the impugned order to the effect that the impugned allotment orders were violative of any of the constitutional provisions including Part III and Part IV of the constitution nor do we find any indication in the impugned order that there arose any such extraordinary exigencies or emergent situation for which it was essential for the respondent No. 2 to exercise power under Section 296 of the Act. It is further submitted by Mr. Choudhury that while the petitioners were favoured with allotment of two shop rooms and they deposited 50% of the bid money they acquired a right and cancellation of the allotment order in the manner as has been done by respondent No. 2 would be violative of the Fundamental Rights of the petitioners and that too without giving them any opportunity of being heard. The submission of Mr. Choudhury appears to have some force.

3. Mr. D. N. Baruah, learned counsel who represents the respondent Nos. 3 and 4 has submitted that the impugned order has not been challenged by 13 other allottees though the impugned order has the force of cancellation of the allotment made by respondent No. 3 in their favour. It is further submitted by Mr. Baruah, learned counsel for the respondent Nos. 3 and 4 that in any event if the order is quashed or set aside the effect of the order of this Court may be confined to the cases of the petitioners and not to be extended with regard to other allottees.

4. We have also heard Mr. B. P. Borah, learned Government Advocate appearing on behalf of respondent Nos. 1 and 2 who has submitted before us that the respondent No. 2 considered the merit of the petition filed against the order of allotment and he had the subjective satisfaction to pass the impugned order under Section 296 of the Act. It is fairly submitted by Mr. Borah, learned Government Advocate that record is not available with him to show as to whether the Government was moved or whether the impugned order was forwarded to the Government for approval as provided under Section 296 of the Act.

5. We have given due consideration to the respective submissions of the learned counsel of the parties. One fact cannot be lost sight of that the impugned order contains two parts. They are (1) Authority of respondent Nos. 3 and 4 was restrained and/or prohibited from execution of the allotment order with a direction to return the security premium to those allottees. (2) The authorities were directed to call for fresh tenders and certain conditions were imposed. The second part is without any authority of law as it is not contemplated to pass such order under Section 296 of the Act. On overall consideration of the facts and circumstance of the case and the discussion as referred to above, we are of the opinion that the impugned order cannot stand and it must be set aside as it was not passed on proper application of the provisions of Section 296 of the Act.

For the reasons set forth above we quash the impugned order dated 18th November, 1986 passed by respondent No. 2 as per Annexure IV to this petition with a liberty to the authority concerned of respondent Nos. 3 and 4 to invite fresh tenders for allotment in respect of 13 other rooms and to receive the balance amount from the petitioners for room Nos. 8 and 12 respectively. Rule is made absolute.