
(2005) 08 GAU CK 0014
In the Gauhati High Court
Case No : Writ Petition (C) No. 7365 of 2004

Santanu Banerjee

APPELLANT

Vs

Gauhati Municipal Corporation and Others

RESPONDENT

Date of Decision : 30-08-2005

Acts Referred:

Citation : (2006) GLT 80 Supp

Hon'ble Judges : Amitava Roy, J

Bench : Single Bench

Advocate : B.C. Das, A. Das Gupta and S. Bhuyan, for the Appellant; G.A., B.P. Todi, B. Choudhury, R. Islam, R. Dey and N. Mitra, for the Respondent

Judgement

Amitava Roy, J.—The decision of the Guwahati Municipal Corporation (hereinafter referred to as the "Corporation") to allot room/stall in the newly constructed Fancy Bazar Market Complex, Guwahati to the Respondent No. 5 in preference to the Petitioner is the subject matter of scrutiny in the instant petition.

2. I have heard Mr. B.C. Das, Senior Advocate for the Petitioner, Dr. B.P. Todi, learned Standing counsel for the Corporation and Mr. B. Choudhury, Advocate for the Respondent No. 5.

3. The rival versions are available from the pleadings of the parties. According to the Petitioner, his father, late Sambhu Nath Banerjee was a business man dealing in tea leaf (retail) in the Fancy Bazar Municipal market in room No. 29 since 1974-75. The room was jointly allotted in the name of Chandra Kanta Bhuyan, the father of the Respondent No. 5 and his father. The business, however was practically conducted by the Petitioner's father. The Corporation also granted trade licence to the Petitioner's father from time to time. The market was gutted in a devastating fire in February, 1989. According to the Petitioner, the Respondent No. 5's father had expired about 4-5 years prior to the fire incident and that therefore as the room with the merchandise in trade had been then in possession of his father, it was he who incurred loss in the episode. The

Petitioner's father was accordingly enlisted as a fire victim along with other similarly situated persons of the market. By way of stop gap arrangement, the Corporation allotted rooms/stalls to the persons affected in the Machkhowa temporary market pending construction of the Fancy Bazar Municipal market. It was at that stage, that the Corporation issued an allotment order dated 8.5.1989 jointly to the Petitioner's father and the father of the Respondent No. 5 (since deceased). As the Respondent No. 5's father had, in the meantime, expired, in terms of the allotment letter, the Petitioner's father entered into an agreement with the Corporation and on the strength thereof, was allowed to occupy room No. 32 in the temporary municipal market, Machkhowa with effect from 26.5.1989.

4. On 8.6.1990, the Petitioner's father made an application before the Corporation for transferring the room No. 32 of Machkhowa Municipal market in the name of the Petitioner. The request was acceded to and accordingly, by order dated 4.9.1990 the said room was allotted to the Petitioner by cancelling the existing allotment in the name of the father of the Respondent No. 5 and the Petitioner's father. Since thereafter, the Petitioner has been conducting his business in the said room by paying all municipal taxes relating thereto.

5. As in the meantime, the construction of the Fancy Bazar Municipal market was nearing completion, the authorities of the Corporation initiated steps to allot the rooms/stalls therein to the allottees in the temporary Municipal market, Machkhowa. Notices were accordingly issued. Though, the Petitioner was in occupation of the room No. 32 of the said market, he was not served with any such notice. On enquiry, he came to learn that a notice in fact, had been issued in the name of the Respondent No. 5's father. On objection being raised by him, a proceeding was initiated and the Petitioner was directed to present himself before the Joint Commissioner of the Corporation. According to the Petitioner, though he responded to the said direction and produced all documents in support of his claim, in fact, no positive step was taken thereon. Having come to learn that the Corporation had started collecting money from the allottees for formally handing over the rooms/stalls in the newly constructed Fancy Bazar Municipal market scheduled to be opened on 2.10.2004, the Petitioner approached the Corporation authorities for depositing the money for allotment of a room therein only to be informed that the authorities already had accepted the deposit made by Respondent No. 5 who claimed to be the heir and successor of Chandra Kanta Bhuyan. As the representation submitted by the Petitioner against the proposed allotment in favour of the said Respondent remained unattended, he approached this court.

6. The stand of the Corporation in its affidavit is that as per its records the room No. 29 of the Old Fancy Bazar Municipal market was allotted in the name of Chandra Kanta Bhuyan, the father of the Respondent No. 5 and that accordingly his name was enlisted as a fire victim. According to the Corporation, in terms of the order dated 11.10.2002 passed by this Court in Civil Rule No. 5290/1998 and

WP (C) No. 4586/2000 only those persons with licence/authority from the Corporation on or immediately before the fire incident were to be considered for allotment and therefore, the Respondent No. 5 being the heir of late Chandra Kanta Bhuyan was decided to be allotted a room in the newly constructed Fancy Bazar Municipal market.

7. The Respondent No. 5 in her affidavit while endorsing the above stand of the Corporation asserted that her father was the sole allottee of room No. 29 in the Old Fancy Bazar Municipal market. She denied that the allotment was joint in the name of her father and the father of the Petitioner. She maintained that the father of the Petitioner was merely engaged to look after the business of her father at the relevant time when he (her father) was suffering from chronic illness. She asserted that in the fire, her father incurred loss and accordingly his name was enlisted as a fire victim vis-a-vis room No. 29. According to the answering Respondent, the fact that the room No. 32 of the Machkhowa temporary Municipal market had been allotted to her father on 8.5.89 was not disclosed to her by the Petitioner's father and that the transfer of the room/stall in the name of the Petitioner was only to deprive her. The above developments were not informed to her and that all the time she was under the bonafide expectation that a stall/room would be allotted to her in the newly constructed Fancy Bazar Municipal market at the appropriate point of time, she being only the heir of her father. Her assertion is that persons other than fire victims had also been allotted rooms/stalls in the Machkhowa temporary market and that rightly no notice was issued to the Petitioner. According to her, in response to the notice issued by the Corporation to the fire victims to register their claims for rooms/stalls in the newly constructed Fancy Bazar Municipal market, she submitted necessary documents and the Corporation authorities being satisfied with the genuineness of her claim, asked her to make necessary deposits which she accordingly did.

8. In the above state of pleadings, Mr. Das has argued that Petitioner's father being the actual fire victim, qua room No. 29 of the Old Fancy Bazar Municipal market and the Petitioner having stepped into his shoes with the knowledge and approval of the Corporation authorities, he was entitled in law to be allotted the room/stall in the newly constructed Municipal market and in that view of the matter, the decision to prefer the Respondent No. 5 therefore is grossly illegal, arbitrary and discriminatory and is liable to be adjudged as such. According to the learned senior Counsel, the underlying objective being to allot rooms/stalls in the newly constructed Fancy Bazar Municipal market to rehabilitate the fire victims, the Respondent No. 5 who admittedly had no association with the business from before the fire incident cannot have a legal claim therefor. The Respondent No. 5's father having expired before the fire and as the Petitioner's father was actually in possession of the room No. 29 of the Old Fancy Bazar market carrying on the business of his own, he was the de facto victim vis-a-vis the said room and therefore, the Petitioner was entitled in law to the allotment in the new market. This is more so, when the Petitioner had been accepted in

between to be the sole allottee of room No. 32 in the Machkhowa temporary market. Referring to the allotment order dated 8.5.1989, the communications dated 26.5.1989, 2.8.1990 and the order dated 4.9.90, the learned Counsel urged that it was apparent therefrom that the room No. 32 of the temporary Municipal market at Machkhowa had been allotted to the Petitioner's father and thereafter to the Petitioner as a makeshift arrangement. Mr. Das in the above conspectus of facts, therefore, argued that the decision of the Corporation now to allot the room/stall in the newly constructed market to the Respondent No. 5 is against the weight of facts to the contrary is therefore illegal, irrational and in defiance of logic. In support of the fact that the Petitioner had been recommended as a fire victim, the learned senior Counsel invited the attention of this court to a letter issued by the United India Insurance Co. Ltd. to the Petitioner's father offering compensation for the loss suffered to the insured goods.

9. Dr. Todi in reply, with reference to the demand register of the Corporation has contended that as the room No. 29 in the Old Fancy Bazar market had been allotted actually to the Respondent No. 5's father, the decision to allot a room/stall in the newly constructed market to the Respondent No. 5 as his heir cannot be faulted with. This, Dr. Todi argued, being in consonance with the directions of this Court contained in the judgment and order dated 11.10.2002 rendered in Civil Rule No. 6290/1998 and the WP (C) No. 4586/2000 is unexceptionable.

10. Mr. B. Choudhury, learned Counsel appearing for the Respondent No. 5 has urged that the Respondent No. 5's father being the sole allottee of room No. 29 in the Old Municipal market and being a genuine fire victim, the Corporation was perfectly justified in deciding to allot a room/stall in the newly constructed municipal market at Fancy Bazar in favour of the Respondent No. 5. Referring to the list of fire victims annexed to the counter of the Respondent No. 5, the learned Counsel contended that it would clearly appear therefrom that the father of the Respondent No. 5 had been recommended to be a fire victim by the Corporation and that therefore, the Petitioner's claim is wholly untenable in law. Referring to the tax paying receipt dated 11.11.88, Annexure-A1 to the Respondent No. 5's counter in support of the plea that the Respondent No. 5's father was the sole allottee of room No. 29 of the Old Fancy Bazar Municipal market, Mr. Choudhury further submitted that as the rooms/stalls in the Machkhowa temporary market had been allotted to persons other than fire victims as well, the Petitioner's claim as a fire victim on the strength of his occupation of room No. 32 in the temporary market at Machkhowa is wholly untenable. Contending that the issuance of licence for carrying on business is not indicative of the such a status, the learned Counsel further argued that the Respondent No. 5 being the heir of the original allottee, she was entitled in law to be allotted a room/stall in the newly constructed market and therefore, this court in the exercise of its power of judicial review would not interfere with the decision of the Corporation based on record.

11. The rival arguments have been carefully weighed. The documents contained in the official records produced by the learned standing counsel of the Corporation relevant for the resolution of the controversy appear to be an extract of the demand register of the Corporation and a list of fire victims prepared on 3.12.2002. In other words, the official records do not disclose any document to render the annexures to the writ petition bearing on the allotment of room No. 29 of the Old Fancy Bazar market, room No. 32 of the Machkhowa temporary market and the transfer thereof in favour of the Petitioner on 2.8.1990 unworthy of credit. The said communications/orders therefore logically cannot be left out of consideration in deciding the issue, the same being contemporaneous in nature. The notice dated 29.8.85, Annexure-A to the writ petition prima facie discloses that the room No. 29 in the Old Fancy Bazar Municipal market had been allotted jointly to the father of the Respondent No. 5 and the Petitioner's father. Annexures-B series to the writ petition demonstrate that licence for carrying on business in the said room had been issued in favour of the Petitioner's father. The allotment letter dated 8.5.1989, Annexure-C to the writ petition indicates that the room No. 32 of the Machkhowa temporary market had been allotted jointly to the Respondent No. 5's father and the father of the Petitioner. The statement on oath that the Respondent No. 5's father had expired 4/5 years prior to the fire incident remains uncontroverted. It is not the case of the Respondent No. 5 either that her father was living and in charge of the business on the date of the fire.

12. On the other hand, it is the categorical assertion of the Corporation that the Petitioner's father was conducting business in Room No. 29 of the Old Fancy Bazar on the date of the fire and that because of the accident incurred loss. The averment that, pursuant to the allotment order dated 8.5.1989 the Petitioner's father had entered into an agreement with the Corporation as the allottee of room No. 32 of the Machkhowa temporary market is not questioned. It is noticeable that the allotment letter dated 8.5.1989 contained a stipulation that on the permanent allotment of room at the Fancy Bazar Municipal market, the allotment of the room in the Machkhowa temporary market would be cancelled. The allotment order further indicates that the relevant licence would be in the name of the allottee. The letter dated 26.5.1989 annexed to the writ petition proclaims that pursuant to the allotment letter dated 8.5.1989, the Petitioner's father had executed an agreement pertaining thereto. By letter dated 2.8.1990, Annexure-E to the writ petition issued by Joint Commissioner of the Corporation, the Petitioner was informed that the room No. 32 in the Machkhowa temporary market previously allotted jointly in the names of Chandra Kanta Bhuyan and his father had been transferred in his name. This was reiterated by order dated 4.9.1990, Annexure-F intimating that as the Petitioner, had pursuant to the order of allotment entered into an agreement with the Corporation, room No. 32 in the Machkhowa temporary market had been allotted to him and that the allotment thereof in favour of Chandra Kanta Bhuyan and his (Petitioner) father was cancelled.

The relevant extract of the demand register relied upon by the learned Standing counsel for the Corporation refers in the remarks column to an order No. GMT/74/89/11/865 dated 2.8.1990 which corresponds to the letter Annexure-F of the same date addressed to the Petitioner conveying the decision of the Corporation to transfer room No. 32 in the Machkhowa Municipal market in his favour. This, in my view establishes an unmistakable nexus between the room No. 29 in the Old Fancy Bazar Municipal market and the room No. 32 in the Machkhowa temporary market in occupation of the Petitioner.

13. From the above narrative, it can therefore be reasonably concluded that the room No. 29 in the Old Fancy Bazar Municipal market had been initially allotted to the father of the Respondent No. 5 and the Petitioner's father jointly and eventually, after the fire incident it was the Petitioner's father who entered into an agreement with the Corporation in terms of the allotment letter dated 8.5.1989 and continued to conduct his business in the room No. 32 of the Machkhowa temporary market offered for temporary rehabilitation as a fire victim. The Respondent No. 5's father having expired in the meantime, understandably, he was not in the picture thereafter. As a matter of fact, as he had died on the date of the fire, in my considered opinion, he could not have been accepted to be a fire victim.

The events subsequent thereto reveal that the Petitioner had replaced his father through a process approved by the Corporation and consequently, since 2.8.1990 he has been in occupation of room No. 32 of the Machkhowa Municipal market. The endorsement in the demand register of the Corporation unequivocally proclaims the knowledge of the Corporation authorities of the said fact. There is no denial that the room No. 32 in the Machkhowa temporary market was allotted in lieu of room No. 29 in the Old Fancy Bazar municipal market which was gutted in the fire. Significantly, the order dated 4.9.1990, Annexure-F discloses that with the allotment of room No. 32 of the Machkhowa temporary market in favour of the Petitioner, the allotment thereof in favour of the father of the Respondent No. 5 and the Petitioner's father got cancelled. The Petitioner therefore, became the sole allottee of the said room. The fact that the notice dated 29.8.85 had been addressed to the father of the Respondent No. 5 and the Petitioner's father jointly and that the licence had been issued and renewed thereafter in favour of the Petitioner's father belies the contention that the Petitioner's father managed the business carried on in the room No. 29 of the Old Fancy Bazar Municipal market only in the capacity of the manager of the Respondent No. 5's father. This is further confirmed by the allotment letter dated 8.5.1989 addressed to both of them.

14. It is apparent from the stand taken by the Respondent No. 5 in her counter that since the death of her father, she had no association at all with the business conducted in room No. 29 of the Old Fancy Bazar Municipal market and thereafter in room No. 32 of the Machkhowa temporary market. Attention of this court has not been drawn to any rules or guidelines or administrative instructions

to suggest that on the death of an allottee of a room under the Corporation, his/her heirs would automatically be treated as the successor allottee (s). Admittedly, no step had been taken by the Respondent No. 5 to stake any claim either for the room No. 29 of the Old Fancy Bazar Municipal market or room No. 32 of the Machkhowa temporary market as the heir of Chandra Kanta Bhuyan at any earlier point of time. She remained in oblivious for long 15 years and appeared in the scene only when the Corporation geared up to allot rooms/stalls in the newly constructed Fancy Bazar municipal market to the fire victims.

15. It is now time to turn to the directions of this Court in the aforementioned writ petitions as referred to in the Corporation's counter. The issue therein related to allotment of rooms/stalls in the Fancy Bazar Municipal market complex. It appears therefrom that the same controversy had figured for resolution in a still earlier proceeding being Civil Rule No. 281/1989. The Division Bench therein *inter alia* directed the State Government including the Corporation to provide temporary facilities for the licence holders of the Fancy Bazar market at the Machkhowa site and that those, who were entitled to do business at Machkhowa temporary market be settled at the multistoried market cum office complex, whereafter the Machkhowa temporary market would be vacated.

This court in the decision dated 11.10.2002 disposing of Civil Rule No. 5296/1998 and WP (C) No. 4586/2000 recorded that there was no dispute with regard to the temporary accommodation of the fire victims pursuant to the above direction. In the above factual background, the petition was disposed of with a direction to the Corporation to finalize the list of fire victims who were in the business with licence/authority from the Corporation on or before the date of the fire incident. Two categories were comprehended. The first being of the fire victims who were in business with subsisting licence/authority and secondly, those fire victims who were in possession though licence/tenancy were not in force.

From the list available in the records of the Corporation, it appears that on 3.12.2002, a list of fire victims was drawn up after this Court's decision as above. From the stand taken by the Corporation in its counter, it is more than clear that the name of Chandra Kanta Bhuyan had figured in the list acting upon its demand register. It is however intriguing as to how the name of Petitioner could be over looked in view of the endorsement in the remarks column thereof clearly evidencing allotment of room number 32 in the name of the Petitioner. Further, as Chandra Kanta Bhuyan was admittedly dead on the date of the fire the Corporation's approach in accepting the Respondent No. 5's father as actual fire victim in terms of the directions of this court is unintelligible. As alluded hereinabove, on the date of the fire, as the joint allotment of room No. 29 in the Old Fancy Bazar Municipal market was subsisting, the Petitioner's father being the surviving allottee, he ought to have been accepted as a fire victim as category No. 1 allottee clarified by this court in the above decision. The idea of allotment of rooms in the newly constructed Fancy Bazar Municipal market being

to rehabilitate the actual fire victims, in view of the foregoing facts, it is difficult to comprehend as to how either the Respondent No. 5's father and now the Respondent No. 5 can be accepted to be a fire victim in preference to the Petitioner by ignoring the march of events.

16. The Corporation in taking its decision to accept the Respondent No. 5 as the fire victim to be rehabilitated in the newly constructed Fancy Bazar Municipal market as heir of the Respondent No. 5, in my opinion has left out of consideration relevant and germane materials on record. The Corporation ought to have appreciated the issue having regard to the contemporaneous records and materials having a relevant bearing thereon. In view of the attending facts and circumstances and the factual background as noticed hereinabove, I am constrained to hold that the decision of the Corporation to allot room/stall in the newly constructed Fancy Bazar Municipal market in favour of the Respondent No. 5 in preference to the Petitioner cannot have judicial approval. The decision on the face of the records is de hors logic and rationality calling for interference in exercise of powers of judicial review of this court.

17. In the wake of the above, the decision impugned in the instant proceeding cannot be sustained and is adjudged illegal, null and void. The matter stands remitted to the Corporation to take an appropriate decision on the issue bearing in mind the observations recorded hereinabove. Needless to say that if sufficient rooms are available in the newly constructed Fancy Bazar Municipal market, the Corporation in its wisdom may consider the case of the Respondent No. 5 further accommodation therein but in any case, not at the cost of the Petitioner.

18. The petition stands disposed in the above terms. No costs.