
(2016) 11 GAU CK 0037
In the Gauhati High Court
Case No : Writ Petition (C) No. 6436 of 2016

Sri Ajay Kr. Agarwal

APPELLANT

Vs

Guwahati Municipal Corporation

RESPONDENT

Date of Decision : 11-11-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Gauhati Municipal Act, 1973 — Section 342(2)

Citation : (2017) 170 AIC 553 : (2016) 6 GauLJ 669 : (2016) 5 GauLT 214 :
(2016) 5 NEJ 310

Hon'ble Judges : Mr. Arup Kumar Goswami, J.

Bench : Single Bench

Advocate : Ms. D.D. Barman, Advocate, for the Respondent Nos. 8, 9 and 10;
Mr. P.P. Sarma, Advocate, for the Respondent No. 7; Mr. K.N. Choudhury, Senior
Advocate, Mr. S. Chamaria, Mr. M. Phukan and Mr. D. Sarmah, Advocates, for the
Petitioner; Mr. D. Saikia, Learner

Final Decision : Dismissed

Judgement

Mr. Arup Kumar Goswami, J. - By this application under Article 226 of the Constitution of India, 4(four) petitioners call into question the order dated 18.10.2016 issued by the Commissioner, Guwahati Municipal Corporation (for short, "GMC").

2. The petitioners are carrying on their business in a building named as Lalsingh Mansion situated at A.T. Road, Guwahati, Assam. They claim to be tenants under Late Gurubachan Kaur and Late Ikbai Kaur, who are represented by their legal heir, respondent No.7. According to the petitioners, the said building was constructed in the year 1956.

3. By the order dated 18.10.2016, the respondent No.2 had held that Lalsingh Mansion is not safe for human habitation because of its dilapidated condition and, therefore, requires to be sealed with immediate effect as a preventive measure for public safety.

4. The case has a history of previous litigation. A show cause notice dated 12.07.2011 was issued by the Commissioner, GMC to the owners of the building asking them to show cause as to why the building should not be prohibited for further use for the purpose of human habitation on the ground that the condition of the building is unsafe and not fit for human habitation being in a dangerous state causing threat to the lives and property of the occupants of the building and the neighbouring people. The present petitioners along with one Pawan Kr. Agarwal filed a writ petition being WP(C) No.5515/2011 contending that the occupiers/tenants of the building are entitled to notice under Section 342 of the Gauhati Municipal Act, 1971 (for short, "the Act"). The aforesaid writ petition was disposed of by an order dated 12.03.2013 allowing the petitioners to file their objection in the proceeding initiated by the GMC under Section 342(1) of the Act within a period of 1 (one) month from the date of disposal. It was further provided that in the event of objections being filed by the petitioners, the Commissioner, GMC would make necessary enquiries as to whether the building is unsafe and not fit for human habitation and pass necessary speaking order after hearing all the parties including the petitioners and the landlords. The exercise was directed to be completed within a period of 3 (three) months from the date of receipt of the objection, if any, filed within the time allowed by the Court.

5. It is to be noted that WP(C) No.5515/2011 was disposed of along with WP(C) No.2224/2012, which was instituted by 2 (two) petitioners, who also claim to be tenants.

Thereafter, an order dated 28.08.2014 was passed by the Commissioner, GMC in exercise of powers conferred under Section 342(2) of the Act, prohibiting the petitioners and other occupants numbering 26 (twenty-six) from occupying the building and directing them to remove themselves and the movable properties therefrom within 14 (fourteen) days. The said order recites that a notice under Section 342(1) of the Act was issued on 11.07.2012 to the occupants of the building and that no objection and/or reply to the above notice dated 11.07.2012 had been received. It is apparent that the aforesaid notice dated 11.07.2012 was issued during pendency of WP(C) No.5515/2011 and it is averred in the instant writ petition that against the aforesaid notice dated 11.07.2012, WP(C) No.2224/2012 was filed. It is also averred that the order dated 28.08.2014 was recalled by an order dated 11.11.2014 and thereafter, a notice dated 05.05.2015 issued by the Joint Commissioner, GMC under Section 342(2) of the Act was received by 29 (twenty-nine) occupants, including the present 4 (four) petitioners, to attend a hearing before the Joint Commissioner, GMC on 13.05.2015. It was recorded in the order dated 11.11.2014 passed by the Commissioner, GMC that the petitioners had filed objection on 06.04.2013 pursuant to the order dated 12.03.2013 in WP(C) No.5515/2011 and the same had escaped notice of the authority as a result of which notice dated 28.08.2014 came to be issued and it is in that view of the matter, notice dated 28.08.2014 was recalled.

6. In the said notice dated 05.05.2015, amongst others, it is recited that notice dated 11.07.2012 under Section 342(1) of the Act was issued to the occupants and that an Expert Committee was constituted by order dated 15.12.2014 to examine the structural safety of the building and report was submitted by the Committee opining that the building should immediately be barred from being used and the same should be demolished to safeguard human lives and property.

7. The notice dated 05.05.2015 prompted the petitioners to file a writ application along with another and the same was registered as WP(C) No.4130/2015. WP(C) No.4130/2015 was disposed of by an order dated 24.07.2015 providing that the petitioners may respond to the notice dated 05.05.2015 urging all the grounds as may be available to them and in the event of filing any response on or before 14.08.2015, the authority issuing the notice would dispose of the matter taking note of all the attending facts and circumstances and in accordance with law.

8. An appeal was preferred against the aforesaid order dated 24.07.2015. This appeal was registered as Writ Appeal No.222/2015. The aforesaid writ appeal was disposed of by an order dated 15.02.2016 directing that the matter be considered and decided on merit by the Commissioner, GMC himself after affording hearing to all the parties.

9. After passing of the order dated 15.02.2016 in Writ Appeal No.222/2015, an order dated 02.04.2016 was passed by the Commissioner, GMC directing the occupants of Lalsingh Mansion to vacate the same within 14(fourteen) days along with their movable properties as it posed a threat to human habitation and the occupants of the building.

10. Challenging the aforesaid order dated 15.02.2016 in Writ Appeal No.222/2015, a special leave petition was filed before the Hon'ble Supreme Court, which was registered as Petition for Special Leave to Appeal (C) No.8056/2016. The aforesaid petition was disposed of by the Hon'ble Supreme Court by an order dated 13.04.2016. It will be relevant to take note of the aforesaid order in its entirety and, therefore, the same is quoted herein below:-

"We have heard the learned counsel for the parties including the Guwahati Municipal Corporation.

The order passed by the Guwahati Municipal Corporation on 2-4-2016 is quashed with a direction to it to hear out the matter afresh. The petitioners shall be at liberty to produce all the documents in support of their case before the Corporation and after hearing the parties, the Corporation shall pass a reasoned order within a period of seven days from the date of this order. We, however, make it clear that for these seven days of the hearing, status quo of the building, as on today, would be maintained. All the parties are directed to furnish and exchange all documents to be relied upon by them within a period of three days from today.

The Special Leave Petition is disposed of in the afore-stated terms."

11. Perusal of the order of the Hon'ble Apex Court goes to show that the order dated 02.04.2016 passed by the Commissioner, GMC was set aside.

12. As per direction of the Hon'ble Apex Court, the respondent No.2, i.e. the Commissioner, GMC issued a notice dated 14.04.2016 fixing the date of hearing on 16.04.2016. An order was passed by the Commissioner on 16.04.2016, which gave rise to filing of WP(C) No.2522/2016. The writ petition was disposed of by order dated 02.08.2016.

13. The order dated 02.08.2016 noted that some of the occupants of the building had refused to accept notices and that 15(fifteen) occupants including the present petitioners received notices and appeared before the Commissioner, GMC and they had indicated that they had approached the Indian Institute of Technology (IIT), Guwahati for inspection of the building and submission of a report, which was awaited. While granting time to the occupants for submission of the report from the IIT within 30 (thirty) days, occupants were directed to vacate the building within 7(seven) days along with their movable property. It is further evident from the Court's order dated 02.08.2016 that all the counsel appearing for the parties unequivocally submitted that direction to vacate the building was not warranted pending conclusion of hearing and passing of final orders. In the meantime, during the pendency of the writ petition, petitioners had also obtained report dated 05.05.2016 from IIT and a report dated 11.07.2016 from one Frontier Engineers. Accordingly, the writ petition was disposed of with following directions: "(i) the petitioners may, within a period of seven days from today, submit to the Commissioner, GMC, the report of the IIT, Guwahati, dated 05.05.2016, and the report of the Frontier Engineers, dated 11.07.2016; (ii) after a period of seven days from today, the Commissioner, GMC, will issue fresh notice to the occupants of the Lalsingh Mansion for hearing and, therefore, proceed to decide the matter by affording opportunity of hearing to the parties and pass a reasoned order within seven days from the date of issue of notice, and (iii) the direction to vacate the building, as contained in the order dated 16.04.2016, is set aside."

14. In pursuance of the order dated 02.08.2016 passed in WP(C) No.2522/2016, notices dated 09.08.2016 were issued to the occupants and owners of the building to be present for hearing on 24.08.2016. An order was passed on the same day by the Commissioner, GMC holding that building was not safe and as such, the same is required to be sealed and, therefore, directed the occupants to vacate the building within 7(seven) days.

15. The said order dated 24.08.2016 gave rise to WP(C) No.5184/2016 at the instance of the petitioners. By an order dated 20.09.2016, the said order was set aside on the submission of Mr. D. Saikia, learned Additional Advocate General, Assam, as he conceded that the order was passed relying on certain reports, which were not made available to the petitioners as well as other contesting parties. While setting aside the said order dated 24.08.2016, this Court directed that a fresh notice for hearing shall be issued to the present petitioners,

respondent Nos.7, 8, 9 and 10 enclosing all reports on which reliance was going to be placed by the Corporation and thereafter, the Commissioner, GMC would proceed with the matter by affording an opportunity of hearing to the parties and pass a reasoned order within a period of 10 (ten) days from the date of issuance of the notice.

16. The present impugned order dated 18.10.2016 issued by the Commissioner, GMC was passed subsequent to the direction dated 20.09.2016 in WP(C) No.5184/2016 based on a notice dated 26.09.2016 fixing a date of hearing on 04.10.2016.

17. Mr. K.N. Choudhury, learned senior counsel appearing for the petitioners has submitted that under Section 342(1) of the Act, before any order is passed by the Commissioner prohibiting further use of building for human habitation or occupation, the owner and occupier of the building have to be given an opportunity of appearing before the Mayor-in-Council in person or by agent in support of his objection and no such opportunity having been given in the instant case, the impugned order is liable to be set aside on this count alone. It is also submitted by him that along with the notice dated 26.09.2016 requiring the petitioners to appear for hearing before the Commissioner, GMC, 4 (four) documents were stated to have been enclosed but no such documents were made available.

Subsequently, on request of the petitioners, letter dated 03.08.2015, at serial No.4 of the notice dated 26.09.2016 was made available and as such, the impugned order is not only violative of the principles of natural justice but also violative of the directions of this Court. He has submitted that notice dated 05.05.2015 could not have been a notice under Section 342(2) of the Act, though styled as such, as no hearing is contemplated under Section 342(2) of the Act. The learned senior counsel has drawn the attention of the Court to a report of Dr. Indrani Gogoi at Annexure-10 to show that the report was dated 31.03.2015 but in Annexure-9, which is a report of the Committee, mention has been made about the report of Dr. Gogoi even before submission of such report by Dr. Indrani Gogoi and thus, no sanctity can be attached to such reports. In the course of his submissions, he has also relied upon the report submitted by the Department of Civil Engineering, IIT, Guwahati. Mr. Choudhury has also submitted that the entire exercise was undertaken by the Corporation to prohibit use of the building on extraneous consideration at the behest of the owners of the building in order to enable the owners to obtain vacant possession of the land by removing the tenants to facilitate construction of a new multi-storied building. Mr. Choudhury submits that non-furnishing of the letter of the Fire Department, listed at serial No.1 of the notice dated 26.09.2016, has caused grave prejudice to the petitioners. He has placed reliance on a judgment of the Apex Court in *Penu Balakrishna Iyer v. Ariya M. Ramaswami Iyer*, reported in AIR 1965 SC 195.

18. Mr. D. Saikia, learned Additional Advocate General, Assam has submitted that

order dated 15.02.2016 passed in Writ Appeal No.222/2015 goes to show that the matter was directed to be decided by the Commissioner, GMC and at no point of time, the petitioners prayed for opportunity of hearing before the Mayor-in-Council. It is submitted by him that the writ appellate Court had also taken note of the fact that the original notice dated 28.08.2014 was issued under Section 342(2) of the Act. It is contended by him that it is not correct as submitted by Mr. Choudhury that documents were not furnished to the writ petitioners and that hearing had taken place without furnishing copies to the petitioners as indicated in the notice dated 26.09.2016. It is contended by him that the Committee, which was constituted by the Commissioner, GMC, consisted of technical persons and the Committee unequivocally opined that building should be barred from being used and the building needs to be demolished. He has also submitted that the Commissioner, GMC rightly observed in the order that the report of the Civil Engineering Department of the IIT, Guwahati did not give any specific comment as to whether the building is fit or unfit. He has also submitted that no case is made out for interference and the writ petition should be dismissed in limine as there is no infirmity in the decision making process.

19. Mr. P.P. Sarma, learned counsel appearing for the respondent No.7, while endorsing the submissions of Mr. Saikia has further submitted that there is incongruity in Section 342 of the Act as while Section 342(1) of the Act recognises power of the Commissioner to prohibit use of any building for human habitation or occupation, the proviso thereof speaks of an opportunity of appearing before the Mayor-in-Council in person or by agent in support of his objection. He submits that if the order is to be passed by the Commissioner, opportunity of hearing before the Mayor-in-Council is superfluous as hearing conducted by one authority and order passed by another authority is against all canon of principles of natural justice and such order can never be sustained.

20. Ms. D.D. Barman, learned counsel appearing for the respondent Nos.8, 9 and 10 echoes the submissions of Mr. D. Saikia.

21. I have given my anxious consideration to the submissions advanced by the learned counsel appearing for the parties and have perused the materials on record as well as the record produced by Mr. Saikia.

22. The petitioners had not annexed the notice dated 05.05.2015 though arguments have been advanced on the same. The file produced by Mr. Saikia contains a notice dated 05.05.2015, which is stated to be one under Section 342(2) of the Act. Sections 342(1) and 342(2) of the Act are extracted herein below for better appreciation:-

"342. Provisions regarding buildings unfit for human habitation. - (1) If after obtaining the opinion of the Engineer, it appears to the Commissioner that any building or part of a building intended or used for human habitation or human occupation for any purpose whatsoever is unfit for such habitation or occupation, he shall give to the occupier and in case the building is not occupied, to the

owner notice in writing stating such reasons and signifying his intention to prohibit the further use of such building or part of a building for such purpose, and calling upon the owner or occupier to state in writing his objection, if any, to such prohibition within seven days after the receipt of notice. If no objection is raised by such owner or occupier within the prescribed period, or if the grounds of such objection appear to the Commissioner to be insufficient or not well founded, he may prohibit by an order in writing the further use of such building or part of building for human habitation or occupation:

Provided that, before such order is given, the owner or occupier of the building shall be given an opportunity of appearing before the Mayor-in-Council in person or by agent in support of his objection.

(2) Notice of such prohibition shall be served upon the owner of any building or part of a building affected thereby and also upon every occupier or user thereof stating the fact of such prohibition specifying a period not being less than fourteen days after the date of such notice within which every such person shall remove himself and his movable property from the said building or part thereof, and if on the day so appointed any such person has failed to remove himself and his movable property from the said building or part thereof, the Commissioner may cause him and his property to be removed and may recover from him the cost of such removal."

23. Perusal of the order dated 15.02.2016 of the Division Bench in Writ Appeal No.222/2015 goes to show that the petitioners expressed apprehension of denial of hearing by the Commissioner, GMC before any action is taken under Section 342 of the Act, as notice dated 05.05.2015 was issued by the Joint Commissioner. Accordingly, the Division Bench directed the Commissioner, GMC to decide the issue on merit by himself after affording hearing to all concerned parties. It is significant to note that the order of the Division Bench was as such not set aside by the Hon"ble Apex Court. Subsequent to passing of the order by the Hon"ble Apex Court, in WP(C) No.5184/2016, direction was issued to the Commissioner, GMC to hear the matter after affording an opportunity of hearing to the parties. At no stage, the petitioners urged before the Court that a hearing is also to be afforded by the Mayor-in-Council.

The orders dated 02.08.2016 and 20.09.2016 passed in WP(C) No.2522/2016 and WP(C) No.5184/2016, respectively, were also not assailed in any forum. If the Commissioner, GMC is to pass a reasoned order after hearing the concerned parties and when the orders directing such hearing was not assailed, it is too late in the day for the petitioners to contend that they were deprived of the opportunity of appearing before the Mayor-in-Council in support of their objection. In the teeth of the directions of this Court requiring the Commissioner, GMC to afford hearing and to pass a reasoned order, in any view of the matter, even if it is assumed that notice issued was one under Section 342(1) of the Act, then also the impugned order cannot be faulted on the ground of the Commissioner, GMC having passed the order without affording an opportunity to

the petitioners to appear before the Mayor-in-Council in person or by agent in support of their objection.

24. Reliance placed by Mr. Choudhury in Paragraph-8 of Penu Balakrishna Iyer (supra) is not attracted in the facts and circumstances of the present case. In the aforesaid case, the Apex Court held that if at the time when the special leave was granted, a particular ground is argued and was rejected on merits, then it would not be open to the respondents to raise the same point over and again at the time of the final hearing of the appeal. If, however, there was no caveator or even if caveator had appeared but had not raised the point or even if he had raised the point, the Court did not decide it before granting special leave, there will be no technical bar of res-judicata. In the instant case, at any rate, the orders dated 02.08.2016 and 20.09.2016 passed in WP(C) No.2522/2016 and WP(C) No.5184/2016, respectively, attained finality. Such a plea as raised now regarding opportunity of placing objection before the Mayor-in-Council was not even urged as amply demonstrated from the orders of the Court. Plea may have been taken in the writ petition but then many pleas are taken but not canvassed. In essence, the petitioners have waived their right to raise this legal plea now. If a plea as raised now had been raised and canvassed before the Court, the Court could have considered such submission and would have passed such order as would have been deemed appropriate considering the submissions.

25. In the writ petition, non-furnishing of documents had been dealt with in Paragraphs-11 and 17, more particularly, in Paragraph-11. In Paragraph-11, statements are made that the referred documents in the notice dated 26.09.2016 were not actually furnished and when a request was made vide letter dated 04.10.2016, the respondent No.2 provided only one document, i.e. letter dated 03.08.2015. Apparently, incorrect statements had been made in the writ petition. In the letter dated 04.10.2016, which is annexed as Annexure-4 of the writ petition, it was mentioned that document at serial No.2 and document at serial No.3 had been received and request was made to furnish document at serial No.1, i.e. letter dated 14.03.2016 of the Fire Department and the document at serial No.4, i.e. letter dated 03.08.2015. The Commissioner, GMC in the impugned order dated 18.10.2016, had recorded that 2 (two) documents were furnished to Mr. M. Phukan, who represented the petitioners before the Commissioner, GMC on 04.10.2016 and thereafter, case was adjourned to 07.10.2016. Though Mr. M. Phukan is also appearing in this case, there is no denial of the aforesaid observation and assertion of the Commissioner, GMC in the impugned order to the effect that Mr. Phukan had received 2 (two) documents. It is also noted by the Commissioner that the dates in respect of the aforesaid 2 (two) documents were not tallying with the dates reflected on the body of the notice. There is a letter dated 14.03.2016 of the Additional Deputy Commissioner and Chief Executive Officer, District Disaster Management Authority, available at Page-25 of the writ petition, where there is a reference to a letter dated 09.02.2016 of the Deputy Director (Tech.), Fire & Emergency Services. The petitioners have enclosed the said letter dated 09.02.2016 at

Page-27 of the writ petition. It is already noted that the petitioners had received 2 (two) documents out of 4 (four), as indicated in the notice dated 26.09.2016. Therefore, there is no escape from the conclusion that the petitioners received all the documents, which were indicated in the notice dated 26.09.2016.

26. The Lecturer, Selection Grade, Department of Civil Engineering, Assam Engineering Institute had submitted a report dated 31.03.2015 on vulnerability assessment of the building. The building in question measures 89 feet 4 inches in length and 50 feet width in the ground floor. Apart from the ground floor, there are 3 (three) other floors and the upper floors have been cantilevered measuring 92 feet 6 inch in length and 55 feet in width in the terrace level. It is noted therein that the architectural plan or structural details of the building are not available for perusal and that a visual inspection of the building was carried out to assess its multi-hazard vulnerability. In the said report, it was concluded that the building was originally not designed or built for the present occupancy or load and the building does not conform to the National Building Code recommendations. It is recorded that the building has deteriorated and the structural members no longer have the required capacity to withstand the load it is subjected to; the building is very vulnerable to fire and earthquake and may suffer damage of Grade-4, implying that there may be heavy to substantial damage to the building and as the building is located in a commercial place with high density of population and buildings, failure or damage of the building may cause loss of lives and property; there are no fire safety measures installed in the building; the cantilevered verandah slabs and staircase landings show spalling concrete with exposed reinforcements, which may fail any day; the electrical wiring, air conditioning conduits, cables, plumbing are in a very precarious state and may lead to accident. Finally, it was opined that the building should either be demolished or reconstructed.

27. As noticed earlier, the Commissioner, GMC had also constituted a Committee. The composition of the Committee is reflected in the order dated 18.10.2016. It consisted of the Additional Commissioner, GMC as Chairman and Chief Engineer, GMC-cum-Additional Chief Engineer, PWD (Building), Associate Planner, GMC, Representative of the Civil Engineering Department, Assam Engineering Institute and Representative of Fire & Emergency Services, Assam as Members. Thus, the composition of the Committee leaves no manner of doubt that the Committee Members, as a whole, are qualified to comment on the state of the building.

There is no doubt that the report of Dr. Indrani Gogoi is dated 31.03.2015. The credibility of the report submitted by the Committee is sought to be impeached by Mr. Choudhury on the ground that it had purportedly taken note of the report of Dr. Indrani Gogoi, though the report of Dr. Indrani Gogoi is of a later date. The contention advanced is entirely misplaced as the report which is annexed by the petitioners as Annexure-9 at Page-93 of the writ petition is not dated. Date of visit is, of course, recorded, which is 11.02.2015. The Committee observed that the building, which is located in a densely populated commercial area of

Guwahati, is in a dilapidated state and in many places, in all the roofs, visible cracks have occurred and cover plaster have fallen off exposing the reinforcements. After inspection and also taking note of the report submitted by Dr. Indrani Gogoi, the Members opined that the building is vulnerable to earthquake as Guwahati is in Zone-V; it is beyond repairing and is posing threat to the human lives using the building and also to the passerby; as the electrical wiring is in a very bad shape, the building also poses threat of fire-hazard.

Accordingly, the Committee was of the view that the building should be immediately barred from being used and the users/owners should be advised to demolish the building and if it is not so done, Corporation should proceed with further action to safeguard human lives and property. The letter dated 09.02.2016 goes to show that there was loss of structural integration and stability and thus, vulnerable from the fire safety point of view.

28. After noting the aforesaid reports, it will be appropriate also to have a look at the report of IIT, Guwahati. In the said report also, it was noted that information on foundation could not be acquired as structural details of the building was not available and sub-structure part could not be inspected as there was no structural drawing available and, therefore, the building was visually inspected. It is noted that structural distress could be seen at a number of locations. Cracks in structural and non-structural parts, mainly plaster deterioration with age at different locations and weeds growing could be seen from outside of the building.

Exposed corroded reinforcements had been noticed in several locations in slabs, columns and beams, especially in ground floor. In the inside of the building also structural distress at number of locations had been observed. Results in ultrasonic pulse velocity test used to establish/check homogeneity of the concrete, the presence of cracks, voids and other imperfections, changes in the structure of the concrete, etc. is graded as doubtful to medium. There is no finding whatsoever in the report as to whether the building in question is fit for human habitation and it was rightly recorded by the Commissioner, GMC that the report is too technical and he rightly concluded that based on the said report, it cannot be concluded that the building in question is safe.

29. In the analysis of the report of the IIT made by Frontline Engineers on which reliance is placed by the petitioners, they say that there is no clear indication in the report of the IIT that the building is unsafe for human habitation. As noted earlier, the report of IIT does not say that the building is safe for human habitation either. In the analysis of Frontline Engineers, in respect of Schmidt Hammer Test, it is observed that compressed strength of concrete is not up to mark; in respect of ultrasonic pulse velocity, it is noted as medium range contradicting the very report of the IIT, which stated that the quality of the concrete may be graded as doubtful to medium. In conclusion, it is noted that the building is in repairable condition and the report of IIT does not mention any major damage of the building. No damage due to earthquake of around 5 and above in the Richter scale was seen and there is no clear indication that the

building is unsafe. Analysis of Frontline Engineers does not indicate that they had also inspected the building. Based on the said report, it cannot be said that the building in question is safe for human habitation.

30. Report of the Committee unequivocally concluded that the building should be demolished. Only because the owners wanted to construct a multi-storied building and had entered into an agreement for the aforesaid purpose in the year 2009, cannot lead to the conclusion that the impugned order has been passed on extraneous consideration.

31. It is significant in the aforesaid context to take note of the observation of the Commissioner in the impugned order that out of total 32 (thirty-two) families residing in the building, 31 (thirty-one) families had already moved out owing to the condition of the building. This observation of the Commissioner, GMC is not contradicted, though in Paragraph-2 of the writ petition, a bald statement is made that more than 30 (thirty) numbers of tenants are occupying space at different locations of the building. Notice dated 14.04.2016, whereby date of hearing was fixed on 16.04.2016 pursuant to the order of the Hon"ble Apex Court dated 13.04.2016, goes to show that notices were issued to 35 (thirty-five) persons. Similarly, notice dated 09.08.2016 fixing the date of hearing on 24.08.2016 was also issued to 35 (thirty-five) persons and the present petition is filed by only 4 (four) petitioners.

32. Judicial Review is not an appeal from a decision but a review of the manner in which the decision was made. Thus, judicial review is concerned with reviewing not the merits of the decision but the decision making process itself. Judicial Review is intended to prevent arbitrariness, irrationality, unreasonableness, bias and malafide. Materials on record do not persuade the Court to take a view even prima facie that the impugned order suffers from any of these attributes. There is no infirmity in the decision making process and it cannot be said that on the basis of the materials on record the decision taken is such that no responsible authority acting reasonably and in accordance with law could have reached. In passing the impugned order, the Commissioner, GMC had placed reliance on the report of experts. There is no allegation of any malafide or bias against any of the Members of the Committee constituted by the Commissioner or against Dr. Indrani Gogoi.

33. There is a duty cast under the Act to take appropriate steps with regard to the dangerous buildings unfit for human habitation. This is in public interest.

34. In view of the discussions above, the writ petition is dismissed in limine. No cost.