

GAHC010023422023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WA/41/2023

SHIW NATH SINGH
SON OF LATE BANARASI SINGH, PERMANENT RESIDENT OF SBI COLONY,
MANAV KALYAN ROAD, TINSUKIA, DISTRICT- TINSUKIA, PIN- 786125.

VERSUS

STATE OF ASSAM AND 7 ORS.
REPRESENTED BY THE URBAN DEVELOPMENT DEPARTMENT,
GOVERNMENT OF ASSAM, JANATA BHAWAN, 1ST FLOOR D-BLOCK,
DISPUR, GUWAHATI- 781006, KAMRUP(M), ASSAM.

2:TINSUKIA MUNICIPAL BOARD
GOVERNMENT OF ASSAM

REPRESENTED BY ITS CHAIRMAN
GNB ROAD
TINSUKIA

DISTRICT- TINSUKIA
PIN- 786125
ASSAM.

3:THE EXECUTIVE OFFICER
TINSUKIA MUNICIPAL BOARD
GOVERNMENT OF ASSAM

GNB ROAD
TINSUKIA

DISTRICT- TINSUKIA
PIN- 786125
ASSAM.

4:TINSUKIA DEVELOPMENT AUTHORITY
REPRESENTED BY ITS PRESIDENT
CHALIA NAGAR

TINSUKIA
PIN- 786125.

5:THE DEPUTY COMMISSIONER
TINSUKIA
OFFICER OF THE DEPUTY COMMISSIONER
GOVERNMENT OF ASSAM

TINSUKIA
PIN- 786125.

6:RISHU KALANTRI
SON OF SRI RAJESH KALANTRI

SBI COLONY
MANAV KALYAN ROAD

TINSUKIA
PIN- 786125.

7:THE CIRCLE OFFICER
TINSUKIA REVENUE CIRCLE
TINSUKIA
PIN- 786125.

8:THE ASSISTANT ENGINEER
TINSUKIA MUNICIPAL BOARD
GOVERNMENT OF ASSAM

GNB ROAD
TINSUKIA

DISTRICT- TINSUKIA

PIN- 786125
ASSAM

Advocate for the Petitioner : MR. M MORE

Advocate for the Respondent : GA, ASSAM

Linked Case : WA/63/2023

SHIW NATH SINGH
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PERMANENT RESIDENT OF SBI COLONY
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GNB ROAD TINSUKIA
DISTRICT- TINSUKIA
PIN- 786125 ASSAM.

P R E S E N T

**HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUMAN SHYAM**

For the appellants : Mr. P.K. Sharma, Advocate
For respondent nos.1,3,5, 7 : Ms. M. Bhattacharjee,
Additional Senior Government Advocate, Assam
For respondent no.6 : Mr. S. Chamaria, Advocate

Date of hearing and Judgment : **23rd March, 2023**

JUDGMENT & ORDER

S. Mehta, C.J.

These two intra-Court writ appeals revolve around a common issue regarding the proposed demolition of a part of the appellant's residential building constructed on a plot of land located in SBI Colony, Manav Kalyan Road, Tinsukia, District-Tinsukia.

The private respondent No.6 filed the writ petition, being, WP(C) 227/2022 which was accepted by the learned Single Judge by order dated 31.10.2022 with the direction to act upon the Field Verification Report dated 29.03.2022 prepared by the authorities concerned leading to an imminent demolition of a part of the construction of the residential building raised by the appellant on his own plot of land. WA 41/2023 is directed against the order dated 23.01.2023 passed in WP(C) 8085/2022 filed by the appellant seeking to assail the said Field Verification Report dated 29.03.2022 and the consequential notice of demolition dated 01.12.2022. As both the writ appeals involve a controversy regarding demolition of a part of the construction raised by the appellant on his own plot of land, the same are being heard and decided by this common judgment and order.

2. Brief facts relevant and essential for disposal of the appeal are noted hereinbelow;

The respondent No.6 is the immediate neighbour of the appellant who owns a plot of land at the SBI Colony, Tinsukia. The appellant sought permission

to build a house on the said plot of land from the Tinsukia Development authority which accorded such permission to the appellant vide letter dated 29.09.2011. The appellant claims that he procured housing loan and thereafter, started construction on his own plot but the process got delayed. The appellant thus applied for renewal of the construction permission which had lapsed by efflux of time. Request was also made to demarcate the appellant's land so that the actual boundary lines could be determined. The respondent No.6 raised an objection against the proposed demarcation claiming that he had already constructed a boundary wall way back in the year 2007 and thus, there was no reason for demarcation. However, the demarcation was conducted and report dated 12.04.2021 was submitted to the Circle Officer, Tinsukia Revenue Circle. The appellant claims that as per the report of the Lot Mandal dated 12.04.2021, the respondent No.6 had encroached upto three feet on the southern side of the appellant's plot. The construction permission granted to the appellant was renewed vide letter dated 07.08.2021.

The respondent No.6 seems to have filed a complaint to the Tinsukia Municipal Board regarding the construction of residential building being raised by the appellant and in turn, the Municipal authorities issued a letter dated 15.12.2020 directing the appellant to stop the construction. The respondent No.6, thereafter, filed a writ petition, being, WP(C) 227/2022 wherein, the Municipal Board, Tinsukia so also the present appellant were impleaded as a party. The learned Single Judge, while entertaining the said writ petition, issued a direction upon the Circle Officer, Tinsukia Revenue Circle to undertake the exercise of field verification. Pursuant to the said direction, a joint field verification was proposed to be carried out. The Tinsukia Municipality issued a communication dated 25.03.2022 constituting a team of four officers, namely,

Sri Biswajit Bhuyan, Town Planner, Tinsukia Municipality (Supervisor of the Team), Sri Niranjan Kalita, Executive Engineer, Town & Country Planning, Tinsukia, Sri Jyoti Prasad Das, Assistant Engineer, Tinsukia Municipality and Smt. Junali Bora, LDA (Technical Branch), Tinsukia Municipality for conducting the field verification of the construction being raised by the appellant on 29.03.2022. A verification report (Annexure-17) dated 29.03.2022 was prepared under the signatures of Jyoti Prasad Das, Assistant Engineer, Tinsukia Municipal Board and Monjit Doley, Executive Engineer, Tinsukia Municipal Board concluding that the building had been constructed in violation of the approved plan. The appellant has questioned the sanctity of said report on the ground that the field verification was not undertaken by duly constituted Committee of four officials who were authorised to conduct the exercise as directed by this Court. Pursuant to receiving the said Field Verification report, a notice dated 20.04.2022 was issued to the petitioner/appellant requiring him to demolish the deviating part of the building raised in violation of the approved plan. The appellant submitted an objection against the said notice. He also submitted an application against the respondent No.6 regarding illegal construction of a boundary wall and encroachment of three feet land in his plot. It seems that neither the appellant nor his counsel remained present on the date of listing WP(C) 227/2022 whereupon, the learned Single Judge proceeded to direct the Tinsukia Municipal Board to take appropriate steps and action in accordance with the facts recorded in the Field Verification Report vide order dated 31.10.2022. Pursuant to such direction, final notice dated 01.12.2022 was issued to the appellant requiring him to demolish the deviating portion of construction on the plot in question.

3. Being aggrieved, the appellant preferred WP(C) 8085/2022 wherein,

initially an interim order was passed by order dated 20.12.2022 suspending the impugned notice dated 01.12.2022. The WP(C) No.8085/2022 was dismissed by order dated 23.01.2023. The appellant/writ petitioner also filed a review application seeking review of the order dated 31.10.2022 passed by the learned Single Judge in WP(C) 227/2022 which also came to be rejected by the order dated 23.01.2023. While rejecting the review petition, the learned Single Judge observed that the respondent (writ appellant herein) may challenge the original order dated 31.10.2022 by filing an appeal. WA 41/2023 has been preferred to challenge the order dated 23.01.2023 passed in WP(C) 8085/2022 and WA 63/2023 has been preferred to challenge the order dated 31.10.2022 passed in WP(C) 227/2022.

4. We have heard and considered the submissions advanced by the learned counsel for the parties and have gone through the impugned orders and the material placed on record.

5. Having considered the entirety of facts and circumstances available on record, we are of the firm opinion that the respondent No.6 was not entitled to invoke writ jurisdiction of this Court for seeking a direction of demolition of the construction raised by the appellant Shiw Nath Singh on his own plot of land. The dispute *inter se* between the respondent No.6 and the writ appellant was purely private in nature. The High Court would be loath to entertain such a private dispute while exercising the extra-ordinary writ jurisdiction conferred by Article 226 of the Constitution of India. We are of the firm opinion that the respondent No.6 should have been relegated to approach the Civil Court or the appropriate authority of the Municipality for ventilating his grievances rather than entertaining the writ petition filed in relation to purely a private dispute *inter se* between two individuals.

6. It seems that the respondent No.6 was suspected of having encroached upon the land of the appellant herein and when he apprehended that his encroachment may be questioned, he rushed to the High Court by preferring the WP(C)227/2022. The appellant herein though impleaded as a respondent in the said writ petition, acted negligently and did not plead his cause and thus, the learned Single Judge proceeded to pass an order directing the respondents to act upon the Field Verification Report. The fact remains that the appellant has raised substantive grounds for questioning the sanctity of Field Verification Report dated 29.03.2022 by asserting that the procedure was not undertaken by the duly constituted team of four officials constituted to carry out the verification. Thus, the very foundation of the order dated 31.10.2022 i.e. the Field Verification Report was prepared by an incompetent committee and could not have been acted upon.

7. As a consequence of the above discussion, we hereby reverse the order dated 31.10.2022 whereby, the writ petition, being, WP(C) 227/2022 of the respondent No.6 was accepted. The order dated 23.01.2023 passed by the learned Single Judge rejecting WP(C) 8085/2022 preferred by the present appellant is also reversed as a consequence to the setting aside of the order passed in the WP(C) 227/2022 (supra).

8. However, the authorities of Tinsukia Municipal Board would be at liberty to get a fresh Field Verification Report prepared by following due process of law and by allowing opportunity of participation to all concerned. After verification as per procedure, if any deviation is noticed in the construction raised by the appellant, the same shall be dealt with as per law, which would include an opportunity of compounding the deviation, if any as per law.

The appeals are accordingly disposed of in terms above.

No order as to costs.

JUDGE

CHIEF JUSTICE

Comparing Assistant