

GAHC010228902021



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

Case No. : PIL/1/2022

ANITA VERMA
D/O SRI BALKRISHAN VERMA, RESIDENT OF HOUSE NO. 23, PRATIKSHA
KHARGHULI RIVERSIDE, GUWAHATI 781004, DIST KAMRUP (M) ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY ITS CHIEF SECRETARY TO THE GOVT. OF ASSAM,
DISPUR, GUWAHATI 781006, ASSAM

2:THE ADDITIONAL CHIEF SECRETARY
TO THE GOVT. OF ASSAM
DEPARTMENT OF HOUSING AND URBAN AFFAIRS (ERSTWHILE THE
URBAN DEVELOPMENT DEPARTMENT) DISPUR
GUWAHATI 781006
ASSAM

3:THE JOINT SECRETARY
TO THE GOVT. OF ASSAM
DEPARTMENT OF HOUSING AND URBAN AFFAIRS (ERSTWHILE THE
URBAN DEVELOPMENT DEPARTMENT) DISPUR
GUWAHATI 781006
ASSAM

4:THE ASSAM REAL ESTATE REGULATORY AUTHORITY
REPRESENTED BY ITS REGISTRAR
JAWAHAR NAGAR 37
GUWAHATI 781022
KAMRUP M ASSAM

5:THE CHAIRPERSON

ASSAM REAL ESTATE REGULATORY AUTHORITY
JAWAHAR NAGAR 37
GUWAHATI 781022
KAMRUP M ASSA

Advocate for the Petitioner : MR. U K NAIR

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

Date : 16-08-2022

(R.M. Chhaya, Cj.)

Heard Mr. U.K. Nair, learned senior counsel, assisted by Mr. K.P. Pathak, learned counsel for the petitioner. Also heard Mr. D. Saikia, learned Advocate General, Assam, assisted by Ms. R. Barua, learned counsel, appearing for the respondent No.1; Mr. P. Nayak, learned standing counsel, GMDA, appearing for the respondent Nos.2 & 3 and Mr. P. Goswami, learned standing counsel, RERA, appearing for the respondent Nos.4 & 5.

By way of this public interest litigation, the petitioner has prayed for the following reliefs:-

“In the premises aforesaid, it is respectfully prayed that Your Lordships may be pleased to admit the petition, call for records and issue a Rule calling upon the respondents to show cause as to why a writ/order/direction in the nature of mandamus shall not be issued directing the respondents to

(i) Set up and operationalise a website for the Assam Real Estate Regulatory Authority and/or;

(ii) To maintain proper records of information pertaining to applications for registration of real estate projects by promoters and registration of real estate agents and/or;

(iii) Expediently dispose of pending complaint cases in strict accordance to the provisions of the Real Estate (Regulation and Development) Act, 2016 and/or;

(iv) Frame suitable regulations by the Assam Real Estate Regulatory Authority and respondents concerned as per Section 85 read with Section 86(2) of the Real Estate (Regulation and Development) Act, 2016 in a time bound manner and/or;

Upon cause/causes that may be shown, after hearing the parties and upon perusal of the records, be pleased to make the Rule absolute and/or pass any other appropriate order or direction as Your Lordships may deem fit and proper in light of the facts and circumstances so as to give full and complete relief to the petitioner and;

In the interim, this Hon'ble Court may be pleased to direct the respondent nos.2, 4 and 5 to produce the records relating to any steps taken towards compliance of Section 34 of the Real Estate (Regulation and Development) Act, 2016 as well as records, statements and particulars pertaining to number of complaint cases filed, disposed of and those pending until this date."

The purpose of filing the present petition is to ensure that the provisions of the Real Estate (Regulation and Development) Rules, 2017 and the Assam Real Estate (Regulation and Development) Act, 2016 are implemented in its true letter and spirit.

During the course of hearing, Mr. D. Saikia, learned Advocate General, Assam has apprised this Court that steps have been taken for disposal of the cases for registration, for disposal of complaints, sou motu cases for imposing penalty and for expeditious disposal of the matters.

By an additional affidavit dated 10.08.2022, the respondent Nos.4 & 5 have averred thus:-

"1. That, an Affidavit in Opposition on behalf of Respondent No. 4 and 5 is already being filed and on records but the Respondent No. 4 and 5 further like to bring on records before the Hon'ble Court certain additional facts relating to the prayers of the present petition as follows:

(i) In relation to Prayer No.(i) of instant PIL - Regarding Setting up and making Operational a website of RERA, the deponent begs to state the following.

(a) Website <https://rera.assam.gov.in> was launched on 3rd of February 2022.

(b) National Informatics Centre (NIC) under the Ministry of Electronics and Information Technology, Government of India has developed the aforesaid website.

(c) Presently the website is fully operational and RERA is fully committed to keep on developing the same with time and necessity.

(ii) In relation to Prayer No.(ii) of instant PIL - Regarding maintaining proper records of information pertaining to applications for registration of Projects, the deponent begs to state the following:-

(a) Upon launching of website on 03/02/2022 all applications for registration of projects are online and records are getting maintained in digital form.

(b) Regarding earlier records of offline registration of projects, the RERA on its own and also by pursuing the Promoters are getting it digitalized on a day to day process and RERA should be able to complete the said process within a period of two months.

(iii) In relation to Prayer No.(iii) of instant PIL - Regarding expeditious disposal of Pending complaint cases, the deponent begs to state the following:

(a) Cases are being disposed as expeditiously as possible taking into consideration the due to process of law.

(b) Adjudicating Officer has been appointed on 28/07/2022 under Section 71 of the RE(R&D) Act, 2016 and the adjudication officer has confirmed of joining by the last part of this month i.e., August 2022 vide letter dated 30/07/2022. There shall be further expeditious disposal of cases upon functioning of the Adjudicating Officer.

(iv) In relation to Prayer No.(iv) of instant PIL -Regarding Framing of Suitable Regulations under Section 85 read with Section 86(2) of the Act, the deponent begs to state the following:

(a) As stated earlier in the Affidavit in Opposition, four numbers of Regulations already framed and uploaded in the website of RERA which are as follows:

1. The Assam Real Estate Regulatory Authority (Registration of Projects)

Regulations, 2021

2. The Assam Real Estate Regulatory Authority (Adjudication of Complaints) Regulations, 2021

3. *The Assam Real Estate Regulatory Authority (General) Regulations, 2021*

4. *The Assam Real Estate Regulatory Authority (Engagement of contractual employees) Regulations, 2021*

(b) Further regulations shall be framed in compliance of the Act and Rules and whenever necessity arises.

2. *That, the Respondent No.3 and 4 begs to state that all the prayers of the instant PIL has been complied with and hence prays for closure of the instant PIL.*

3. *That, in furtherance to the above, the deponent begs to state that for effective implementation of the Act and Rules; RERA Assam is coordinating with Government of Assam through the Department of Housing and Urban Affairs (Respondent No.2 and 3) and getting it sorted all issues including man-power requirement by creation of additional post which is presently in the active stage of consideration by the Government after providing of justification by RERA, Assam.*

4. *That, RERA is committed for effective implementation of the Real Estate (Regulation and Development) Act, Act, 2016 and the Real Estate (Regulation and Development) Rules, 2017."*

Even considering the statements made in the earlier affidavit dated 21.04.2022 filed by the respondent Nos.4 & 5, we find that the State Government has made all endeavours to implement the provisions of Real Estate (Regulation and Development) Act, 2016 and the Real Estate (Regulation and Development) Rules, 2017 in its true letter and spirit. We hope and trust that the efforts, which are now put in by the State Government pursuant to various orders passed by this Court shall be maintained, keeping in mind the provisions of 2016 Act and the 2017 Rules. We, therefore, deem it fit to close the proceedings.

Accordingly, the public interest litigation stands disposed of.

We express our sincere gratitude to the effort made by the learned counsels appearing for both the sides to see that the provisions of the Act and the Rules are implemented in its proper way.

JUDGE

CHIEF JUSTICE

Comparing Assistant