

GAHC010002812021



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

Case No. : WP(C)/120/2021

GUWAHATI MUNICIPAL CORPORATION MARKET CENTRAL COMMITTEE
AND ANR
HAVING HEAD OFFICE AT DISPUR SUPER MARKET REP. BY ITS SECY.
PABITRA KR. SARMAH, S/O- LT. KHARGESWAR SARMAH, DISPUR SUPER
MARKET, DISPUR, GHY-6

2: PABITRA KR. SARMAH
S/O- LT. KHARGESWAR SARMAH
DISPUR SUPER MARKET
DISPUR
GHY-

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE SECY. TO THE GOVT. OF ASSAM, GUWAHATI DEVELOPMENT
DEPTT., DISPUR, GHY-6

2: THE COMMISSIONER
GUWAHATI MUNICIPAL CORPORATION
P.O. PANBAZAR
GHY-1
DIST.- KAMRUP (M)
ASSAM

3: THE JOINT COMMISSIONER
GUWAHATI MUNICIPAL CORPORATION
P.O. PANBAZAR
GHY-1
DIST.- KAMRUP (M)
ASSAM

4: THE ADDL. COMMISSIONER
GUWAHATI MUNICIPAL CORPORATION

P.O. PANBAZAR
GHY-1
DIST.- KAMRUP (M)
ASSA

Advocate for the Petitioner : MR. M J BARUAH

Advocate for the Respondent : SC, GMC

Linked Case : WP(C)/1802/2022

FANCY BAZAAR MUNICIPAL MARKET DEALERS ASSOCIATION AND ANR.
REPRESENTED BY ITS SECRETARY ARUP KR. CHOUDHURY
FANCY BAZAAR GMC MARKET BUILDING
FANCY BAZAAR
GUWAHATI-1.

2: ARUP KR. CHOUDHURY
S/O- LATE DEBO PRASAD CHOUDHURY (SECRETARY TO FANCY BAZAAR
MUNICIPAL MARKET DEALERS ASSOCIATION SHOP NO. 142
GROUND FLOOR
G.M.C. MARKET COMPLEX FANCY BAZAAR
GUWAHATI
DIST.- KAMRUP(M)
ASSAM
VERSUS

THE STATE OF ASSAM AND 3 ORS.
REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM
GUWAHATI DEVELOPMENT DEPARTMENT
DISPUR
GUWAHATI-6.

2:THE COMMISSIONER

GUWAHATI MUNICIPAL CORPORATION
P.O. PANBAZAR
GUWAHATI-1
DIST.- KAMRUP(M)
ASSAM
3:THE JOINT COMMISSIONER
GUWAHATI MUNICIPAL CORPORATION
P.O. PANBAZAR

GUWAHATI-1
DIST.- KAMRUP(M)
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4:THE ADDL. COMMISSIONER
GUWAHATI MUNICIPAL CORPORATION
P.O. PANBAZAR
GUWAHATI-1
DIST.- KAMRUP(M)
ASSAM

Advocate for : MR. M K CHOUDHURY
Advocate for : SC
GDD appearing for THE STATE OF ASSAM AND 3 ORS.

Linked Case : WP(C)/2145/2022

GUWAHATI MUNICIPAL CORPORATION AND ANR
MARKET CENTRAL COMMITTEE HAVING HEAD OFFICE AT DISPUR SUPER
MARKET REP. BY ITS SECY. PABITRA KR. SARMAH
S/O- LATE KHARGESWAR SARMAH
DISPUR SUPER MARKET
DISPUR
GUWAHATI-06

2: PABITRA KR. SARMAH

S/O- LATE KHARGESWAR SARMAH
DISPUR SUPER MARKET
DISPUR
GUWAHATI-06
VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM
GUWAHATI DEVELOPMENT DEPARTMENT
DISPUR
GUWAHATI-6.

2:THE COMMISSIONER
GUWAHATI MUNICIPAL CORPORATION
P.O- PANBAZAR
GUWAHATI-1
DIST- KAMRUP (M)
ASSAM
3:THE JOINT COMMISSIONER
GUWAHATI MUNICIPAL CORPORATION

P.O- PANBAZAR
GUWAHATI-1
DIST- KAMRUP (M)
ASSAM
4:THE ADDL COMMISSIONER
GUWAHATI MUNICIPAL CORPORATION
P.O- PANBAZAR
GUWAHATI-1
DIST- KAMRUP (M)
ASSAM
5:GUWAHATI MUNICIPAL CORPORATION
REP. BY ITS COMMISSIONER
GUWAHATI.

Advocate for : MR. M J BARUAH
Advocate for : SC
GMC appearing for THE STATE OF ASSAM AND 4 ORS

Linked Case : WP(C)/702/2022

FANCY BAZAR MUNICIPAL MARKET DEALERS ASSOCIATION AND ANR
REP. BY ITS SECRETARY ARUP KR. CHOUDHURY
FANCY BAZAR GMC MARKET BUILDING
FANCY BAZAR
GUWAHATI-1.

2: ARUP KR. CHOUDHURY
S/O- LATE DEBO PRASAD CHOUDHURY
SECRETARY
FANCY BAZAR MUNICIPAL MARKET DEALERS ASSOCIATION
SHOP NO. 142
GROUND FLOOR
G.M.C. MARKET COMPLEX
FANCY BAZAR
GUWAHATI-1
DIST.- KAMRUP(M)
ASSAM
VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM
GUWAHATI DEVELOPMENT DEPARTMENT
DISPUR
GUWAHATI-6.

2:THE COMMISSIONER

GUWAHATI MUNICIPAL CORPORATION
P.O. PANBAZAR
GUWAHATI-1
DIST.- KAMRUP(M)
ASSAM

3:THE JOINT COMMISSIONER
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P.O. PANBAZAR
GUWAHATI-1
DIST.- KAMRUP(M)
ASSAM

4:THE ADDL. COMMISSIONER
GUWAHATI MUNICIPAL CORPORATION
P.O. PANBAZAR
GUWAHATI-1
DIST.- KAMRUP(M)
ASSAM

Advocate for : MR. M K CHOUDHURY

Advocate for : SC

GDD appearing for THE STATE OF ASSAM AND 3 ORS

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocates for the petitioner : Shri MK Choudhury, Sr. Advocate.
Shri MJ Baruah
Advocates for the respondents : Shri D. Saikia, AG, Assam
Shri S. Bora, SC, GMC

Date of hearing : **06.12.2022**

Date of Judgment : **23.01.2023**

JUDGMENT & ORDER

All these writ petitions are with a similar grievance pertaining to the allotment of rooms in the markets under the GMC, mainly the Fancy Bazar markets were taken up analogous hearing and are being disposed of by this common judgment and order.

2. Before going to the issue(s) involved, it would be convenient if the facts of the cases are stated in brief.

3. The petitioner no. 1 in all these petitions are different Market Committees under the Gauhati Municipal Corporation. In 1989, the entire market in Fancy Bazar was gutted by fire and thereafter, a decision was taken to construct a multi-storied building and to accommodate the shopkeepers and in this direction, the petitioners claim that in spite of repeated orders of this Court since the year 2000, the building could not be completed. Ultimately, after completion of the construction in the year 2004, the rooms were allotted; however, the rent was charged at Rs.10/- per sq. ft. which according to the petitioner was inconsistent with the rent fixed by this Court as per an Expert Committee Report. It is the case of the petitioners that in the year 2020, the rent was again enhanced to Rs.38/- per sq. ft. The said enhancement was the subject matter of challenge in WP(C)/5481/2020 in which a direction was issued on 07.01.2021 for submission and consideration of a representation by the GMC. Accordingly, on 29.01.2021 a representation was submitted which according to the petitioners was ignored and again notice was issued to pay the enhance rate. The petitioners had again filed another writ petition being WP(C)/6380/2021 which was disposed of on 15.12.2021 directing consideration and disposal of the representation dated 29.01.2021.

4. The petitioners allege that thereafter an order dated 18.12.2021 has been passed by the Commissioner, GMC whereby the enhancement of the rates were justified and the prayer to reconsider was rejected. The petitioners contend that while maintaining the enhanced rates, the GMC could not perform their reciprocal duties namely, in providing required facilities. The petitioners further allege that the GMC has been allowing unauthorized market / vendors on the roads approaching the market thereby making the GMC market inaccessible to the customers. It is this action of the GMC which is the subject matter of challenge. It is also the case of the petitioners that on 09.03.2022 the shops of the petitioners were locked for which the petitioners had

to institute WP(C)/702/2022 and pursuant to an interim order of this Court, the locks were opened by the GMC Authorities.

5. The prayers made in these writ petitions are broadly to set aside the rejection order dated 18.12.2021 and also to interfere with the action of enhancing the rent.

6. I have heard Shri MK Choudhury, learned Senior Counsel assisted by Shri MJ Baruah, learned counsel for petitioners. I have also heard Shri D. Saikia, learned Advocate General, Assam along with Shri S. Bora, learned Standing Counsel, GMC for all the respondents.

7. Shri Choudhury, the learned Senior Counsel for the petitioners has submitted that the petitioners fall in a different class altogether inasmuch as, they are fire affected victims who had suffered huge loss due to the fire in which their business had also come to a halt which continued for an unreasonably long period of time. Under such circumstances, enhancing the rates from Rs.10/- per sq. ft. to Rs.38/- per sq. ft. (ground floor) and from Rs.7/- per sq. ft. to Rs.30/- per sq. ft. (mezzanine floor) was wholly unreasonable. It is further submitted that due to the inaction of the GMC Authorities in removing the unauthorized shops surrounding the GMC market, it was inaccessible for the customers to come to the shops of the petitioners for which in spite of the shops being opened, the petitioners were suffering loss in the business. It is accordingly submitted that appropriate action be taken both to reduce the enhanced rents and to take appropriate action to remove the unauthorized shops surrounding the market.

8. Shri Choudhury, the learned Senior Counsel for the petitioners has also submitted that the impugned enhancement in the rent is also opposed to the provisions of the Assam Urban Areas Rent Control Act, 1972 and therefore, it is a fit case for this Court to interfere. Alternatively, it is submitted that a direction may be given for consideration of fresh representation by taking into account all the attending facts and circumstances.

9. *Per contra*, Shri D. Saikia, learned Advocate General, Assam has submitted that the writ petitions are not maintainable at all and are barred by the principles of *res judicata*. He submits that in the same cause of action there were earlier rounds of litigation which were decided by this Court and therefore, the same issue cannot be raised again. A preliminary objection has also been raised on the issue of registration of the petitioner no. 1. It is submitted that the petitioner no. 1 is an unregistered body on whose instance, a writ petition cannot be maintained. So far as WP(C)/120/2021 is concerned, another preliminary objection has been raised regarding not making the GMC as a party respondent

10. On the merits of the dispute, the learned Advocate General has submitted that the enhancement of the rent is of a very reasonable extent. The areas in question are prime business location namely, Fancy Bazar, Ulubari, Dispur Supermarket etc. and the enhanced rate is minimal. As regards the grievance of the petitioners that locks were put on their shops, vide order passed in WP(C)/702/2022, the locks were opened and therefore, there is no cause of action in that line.

11. With regard to the submission that there has been any violation of the provisions of the Assam Urban Areas Rent Control Act, 1972 on behalf of the State, it has been pointed out that application of the said Act is specifically barred by Section 444 of the Gauhati Municipal Corporation Act. In any case, it is submitted that the enhancement is absolutely reasonable and in fact is in the lower side. The State Counsel clarifies that so far as WP(C)/120/2021 is concerned, the same covers all the markets in Guwahati whereas the other two writ petitions, namely, WP(C)/702/2022 and WP(C)/1802/2022 pertain to the Fancy Bazar Market and concerns the fire affected victims. WP(C)/2145/2022 pertains to Dispur Supermarket and the preliminary grievance was against the locking of the market which however has been opened in terms of the interim order passed by this Court.

12. Assisting the learned Advocate General, Shri S. Bora, learned Standing Counsel,

GMC has submitted that the prayer for remand is wholly untenable inasmuch as, vide the order dated 24.12.2020, the representation of the petitioners were duly disposed of. The learned Standing Counsel submits that the revised rates were also on the lower sides which were fixed in the year 2008. It has further been stated that few stalls in the Fancy Bazar Market was auctioned and the minimum rent offered per sq. ft., per month was Rs.130/- juxtaposed the enhancement which is only Rs.25/- per sq. per month. The learned Standing Counsel submits that the order dated 24.12.2020 is well reasoned order, the question of remitting the matter for a fresh consideration will not arise.

13. The rival submissions made by the learned counsel for the parties have been duly considered and the materials placed before this Court have also been carefully examined.

14. First, let us deal with the preliminary objections on the maintainability of the writ petitions. The non-registration of the petitioner no. 1 has been objected to as a non-registered body cannot assume the role of a legal entity. Not impleading the GMC in certain cases has also been objected to along with the objection of the petitions being barred by the doctrine of *res judicata*.

15. As regards the first objection that the petitioner no. 1 is a non-registered body and therefore, does not have any legal existence, this Court is of the view that the said objection is a substantial one. However, this Court being a Court of Equity and there being a second petitioner in the cases, who is a citizen, this Court would not like to non-suit the petitioners on this ground. A similar view of this Court would be on the other objection namely, not making the GMC a party respondent. This Court however, hastily adds that the said view is only in connection to the peculiar facts and circumstances of these cases and are not to be treated as a precedent. As regards the issue of *res judicata*, this Court is of the view that though it is correct that the issue and parties are the same, there was no adjudication on merits in the earlier rounds of

litigation and vide the order dated 17.12.2020 only a direction was given by this Court to consider a fresh representation of the petitioners which was accordingly done vide the impugned order dated 24.12.2020. Therefore, in the strict sense, *res judicata* may not come in the way of adjudication.

16. As regards the merits of the cases, a perusal of the order dated 24.12.2020 would show that the representation of the petitioners were disposed of by the GMC by giving a proper hearing to the petitioners. The narration of facts appearing in the said order would also show that all the relevant factors were taken into consideration wherein the GMC have come to a finding that the enhancement was only 10% of the earlier rate prior to the year 2008 and the rates which were revised in the year 2008 were never paid. As regards the rates in the Fancy Bazar Market the same was discussed and held to be reasonable.

17. This Court finds force in the argument made on behalf of the State that there is absolutely no applicability of the Assam Urban Areas Rent Control Act, 1972 as the same is specifically barred by Section 444 of the Gauhati Municipal Corporation Act, 1971. This Court has also noticed that under Section 315 of the GMC Act, power has been vested upon the Commissioner to enhance the rent and therefore, it cannot be said there has been exercise of power without any authority of law.

18. In an endeavor to show that the enhancement of the rent was unreasonably high, a chart was prepared to show that the enhancement was manifold. However, it is to be seen that the enhanced rate itself is on a much lower side. The chart which has been mentioned in paragraph 7 of WP(C)/120/2021 needs to be examined with the chart annexed as Annexure-3 to the affidavit-in-opposition dated 23.03.2022 filed in WP(C)/120/2021. The said chart would show that certain new allottees were given rooms in the first floor of the GMC Market at Fancy Bazar at the rate of Rs.230/- per sq. per month, Rs.130/- and Rs.157/- per sq. per month to three parties. The said fact has not been denied or rebutted by the petitioners.

19. Under the aforesaid facts and circumstances, this Court is of the considered opinion that even ignoring the preliminary objections on the maintainability of the writ petitions, even on merits, the petitioners have not been able to make out any case for interference. Rather, the present litigations appear to be lacking *bona fide* and have been filed only to prolong the issue. Accordingly, the writ petitions are dismissed. However, while dismissing the writ petitions, the ancillary grievance of the petitioners is also liable to be taken into consideration regarding early completion of the ongoing construction of the new Market Complex and making the business of the petitioners a conducive one by removing the encroachment leading to the shops of the petitioners.

20. Accordingly, these writ petitions are dismissed. The GMC authorities are however directed to take adequate steps to complete all the constructions of the various markets in the city of Guwahati and take steps to remove encroachment and unauthorized vendors, who obstructs the way of the customers to the shops of the members of petitioner no. 1, Committee in the respective cases.

21. No order as to cost.

JUDGE

Comparing Assistant