

GAHC010194432023



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

Case No. : WP(C)/5065/2023

ASHOK KUMAR AGARWALA
S/O- LATE GYANI RAM AGARWALLA,
R/O-
C/O M/S ARUNS G.N.G PATH, WARD NO-12, SIVASAGAR,
PIN-785640, ASSAM,
PRESENTLY RESIDING AT FLAT NO.-202, HAWELIA ENCLAVE , NEAR
KUMAR NURSING HOME, KUMARPARA, GUWAHATI-09

VERSUS

THE DISTRICT DISASTER MANAGEMENT AUTHORITY AND 5 ORS
SIVASAGAR, O/O THE DEPUTY COMMISSIONER SIVASAGAR, ASSAM

2:THE DEPUTY COMMISSIONER
SIVASAGAR
ASSAM

3:THE ADDL. DEPUTY COMMISSIONER
AND CEO DISTRICT DISASTER MANAGEMENT AUTHORITY
SIVASAGAR
O/O THE DEPUTY COMMISSIONER SIVASAGAR
ASSAM

4:SIVASAGAR MUNICIPAL BOARD
REP. BY ITS CHAIRMAN

5:THE EXECUTIVE OFFICER
SIVASAGAR MUNICIPAL BOARD
SIVASAGAR

6:THE EXECUTIVE ENGINEER
PUBLIC WORKS DEPARTMENT (BUILDING)

SIVASAGA

Advocate for the Petitioner : MR. R DUBEY

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

Date : 31-08-2023

Heard Mr. R. Dubey, learned counsel for the writ petitioner. Also heard Ms. S. Sarma, learned Govt. Advocate, Assam appearing on behalf of respondent Nos. 1 to 3, Mr. P.P. Dutta, learned counsel has appeared on behalf of respondent Nos. 4 and 5 and Mr. B. Choudhury, learned standing counsel, PWD, Assam for the respondent No. 6.

The facts of the case, in a nutshell, are that the writ petitioner herein was running a textile business in an establishment housed inside a building located at GNG Road, Ward No. 12, Sivasagar Town in the district of Sivasagar. On 29-05-2023, a fire incident took place in that building destroying goods including cloths, which according to the writ petitioner, was valued at Rs. 05 Crores. After the fire incident, the building was assessed by the PWD, Assam and the Executive Engineer, Sivasagar PWD had allegedly submitted a report indicating that the building was unsafe for occupation. Soon after the fire incident, the writ petitioner had given an undertaking to the District Disaster Management authority to pull down the building himself. As such, taking note of the report of the PWD official and the undertaking earlier given by the petitioner, the Addl. Deputy Commissioner, Sivasagar had issued order dated 26-06-2023 for demolition of the building

at the cost of the petitioner.

The case of the petitioner is that based on the report submitted by M/s Global Tech Testing Lab and M/s Allied Services, two certified and accredited institutions by NABL, it transpired that save and except two pillars of the building, rest of the structure was strong enough. As such, according to the petitioner, if the two pillars were repaired, the building could remain in its present position and there was no safety hazard on account of the building.

Mr. Dubey has invited the attention of this Court to the representation dated 19-07-2023 (Annexure-12) submitted by the petitioner before the respondent No. 2 inviting his attention to the said facts with a request not to go ahead with the demolition of the building. However, despite receipt of the representation, no action has been taken in the matter.

Mr. Dubey submits that if there was a real safety hazard pertaining to the building, his client would have definitely pulled down the building himself. However, it has now transpired from the report submitted by technically qualified institution such as, the M/s Global Tech Testing Lab and the M/s Allied Services that the building is not unsafe for human occupation and therefore, there was no need for demolition of the building. Mr. Dubey further submits that if the building is demolished without considering the report submitted by the technical experts engaged by the petitioner then the same would cause irreparable loss and injury to the writ petitioner. Hence, this writ petition.

Ms. Sarma, learned Govt. Advocate, Assam, on the other hand, submits that the

District Disaster Management Authority is proceeding in the matter based on cogent materials available on record and therefore, the plea taken in the writ petition is not maintainable in the eyes of law. Similar is the stand of Mr. P.P. Dutta as well as Mr. B. Choudhury, learned counsel appearing for the official respondents.

Be that as it may, I find from the materials available on record that there are reports submitted by two firms, viz. (i) M/s Global Tech Testing Lab and (ii) M/s Allied Services who had apparently made an assessment of the building in question and thereafter, submitted reports. Such assessment was made on the basis of ultrasonic Pulse Velocity Test. The readings of the tests are reflected in the reports.

Since the petitioner's specific case is that the readings contained in the report submitted by the two labs does not warrant demolition of the building and considering the fact that the said facts have been brought to the notice of the respondent No. 2 by filing a representation, this Court is of the opinion that the matter deserves suitable consideration by the appropriate authority before any precipitated action is taken in the matter for demolition of the building.

For the reasons stated above, without expressing any opinion on the claims and counter claims made by the contesting parties, this writ petition is being disposed of by providing that the respondent No. 2 shall consider the representation dated 19-07-2023 submitted by the petitioner, if necessary, by giving him a personal hearing in the matter. A report of the Executive Engineer, PWD Sivasagar be also furnished to the petitioner.

It is only, thereafter, that a final decision be taken on the question of demolition of

the building in question.

With the above observation, this writ petition stands disposed of.

JUDGE

GS

Comparing Assistant