

(2022) 11 GAU CK 0036

Gauhati High Court

Case No: Writ Petition (Civil) No. 5638 Of 2020

Rabi Ranjan Dutta

APPELLANT

Vs

State Of Assam And 3
Ors

RESPONDENT

Date of Decision: Nov. 11, 2022

Acts Referred:

- Code Of Civil Procedure, 1908 - Section 115

Hon'ble Judges: Devashis Baruah, J

Bench: Single Bench

Advocate: P. J. Saikia, M. Nirola, N. Goswami, N. N. Upadhyaya

Final Decision: Dismissed

Judgement

1. Heard Mr. P. J. Saikia, the learned senior counsel assisted by Ms. M. Nirola, the learned counsel for the petitioner. Also heard Mr. N. Goswami,

the learned Government Advocate for the respondent Nos.1 to 2 as well as Mr. N. N. Upadhyaya, the learned counsel appearing on behalf of the

respondent No.4.

2. This Court vide an order dated 18.12.2020 issued notice and further directed that operation of the impugned notice dated 18.11.2020 and further

proceedings in connection thereto was stayed till the returnable date.

3. It further appears on record that the said interim order passed on 18.12.2020 was extended from time to time and is still continuing till date. The

respondent No.4 being affected by the said interim order, filed an application seeking vacation, modification and alteration of the order dated

18.12.2020. The said application has come up before this Court for consideration.

4. Upon hearing the learned counsel for the parties it transpires that any decision in the said stay vacating application which has been registered and numbered as I.A.(C) No.603/2021 shall lead to the final disposal of the writ petition, this Court has taken up the said writ petition for disposal at the stage itself.

5. For appreciating the dispute involved in the instant proceedings it would be relevant to take note of that one Shankar Lal Bowari (since deceased)

claiming that the petitioner herein was his tenant had instituted a suit being Title Suit No.10/2009 in the Court of the Munsiff at Dibrugarh against the

Dibrugarh Municipal Board as well as the petitioner who was arrayed as the defendant No.3. In the said suit, the said Shankar Lal Bowari prayed for

declaration that the order dated 26.05.1997 issued by the Dibrugarh Municipal Board granting lease of the suit property, i.e. the plot of land measuring

650 sq. ft. of Site No.15, Ward No.11, covered by Dag No.618 of PP No.91 in Marwaripatty Ward, Dibrugarh Town Mouza as illegal and for

cancellation of the same as well as for other consequential relief. The said suit was decreed vide the judgment and decree dated 21.03.2017 whereby

the order dated 26.05.1997 passed by the Executive Officer, Dibrugarh Municipal Board declared to be null and void. The Trial Court further directed

the defendant Nos.1 & 2 who are the respondent Nos.1 & 2 herein to restore the possession of the plaintiff over the suit premises and the defendant

No.3, i.e. the petitioner herein was directed to deliver vacant possession of the suit premises to the plaintiff.

6. At this stage, it may be relevant herein to mention that the respondent No.4 herein is one of the legal representatives of Late Shankar Lal Bowari.

The petitioner herein, being aggrieved by the said judgment and decree dated 21.03.2013, preferred an appeal before the Court of the Civil Judge,

Dibrugarh which was registered and numbered as Title Appeal No.32/2013. The First Appellate Court, after hearing the parties, set aside the said

judgment and decree dated 21.03.2013 passed by the Trial Court vide the judgment and decree dated 17.08.2017 by modifying the judgment and

decree with the following relief(s) which for the sake of convenience is reproduced herein below:-

A) The Dibrugarh Municipal, Dibrugarh shall call upon the appellant and the legal representatives of the plaintiffs/respondents by giving sufficient time and after giving them reasonable opportunities of hearing shall review the impugned order dated 12.06.1997 (Ext.-4) and thereupon shall pass a speaking order afresh thereon. The whole process be completed within a period of three months from the date of receipt of the copy of this judgment and order.

B) As the parties have incurred expenditure in pursuing the appeal, it is directed that they shall bear the respective cost of litigation.

7. It is an admitted case of both the parties that the said judgment and decree passed by the First Appellate Court has attained finality taking into consideration that the civil revision petition filed under Section 115 of the CPC challenging the said judgment and decree was withdrawn. Be that as it may, from the direction as passed by the First Appellate Court it transpires that the Dibrugarh Municipal Board, Dibrugarh was directed to call upon the appellant and the legal representatives of the plaintiff by giving sufficient time and after giving them reasonable opportunities of hearing, was directed to review the order dated 12.06.1997 and thereupon shall pass a speaking order afresh thereon. It was further directed that the whole process be completed within a period of three months from the date of receipt of the copy of the said judgment and decree.

8. The case of the petitioner herein is that pursuant to the said direction passed in Title Appeal No.32/2013, the Dibrugarh Municipal Board, Dibrugarh heard both the parties and came to an opinion that the petitioner is entitled to get the privilege of renewal of the Lease Deed and accordingly a Lease Deed was executed on 01.03.2019 and thereafter the petitioner had also deposited the site rent to the Dibrugarh Municipal Board, Dibrugarh and as such the direction contained in the judgment and decree dated 17.08.2017 had been complied with. It is the further case of the petitioner that surprisingly the Executive Officer of the Dibrugarh Municipal Board, Dibrugarh as the Board at that relevant point of time was under supersession issued a notice No.DM/EST/OFFICE ORDER/ 01/2019/1711 dated 18.11.2020 directing the petitioner to appear before him on 21.11.2020 for a

hearing regarding settlement of Municipal Lease in respect to the lease premises of the petitioner. The case of the petitioner, therefore, is that as the

Dibrugarh Municipal Board, Dibrugarh has already decided the same and have entered into a fresh Deed of Lease on 01.03.2019, the issuance of

notice by the Executive Officer of the Dibrugarh Municipal Board, Dibrugarh was without jurisdiction and accordingly was liable to be set aside. It is

under such premises that the instant proceedings was filed by the petitioner.

9. Before further proceeding with the matter, this Court made a specific query to the learned senior counsel appearing on behalf of the petitioner as

regards the order which was passed by the Dibrugarh Municipal Board, Dibrugarh pursuant to the judgment and decree dated 17.08.2017 passed in

Title Appeal No.32/2013. The learned senior counsel for the petitioner with all candour submitted that the petitioner is not in possession of any order

passed to that effect. However, the learned senior counsel for the petitioner submitted that as the Dibrugarh Municipal Board, Dibrugarh had already

executed a Deed of Lease dated 01.03.2019, it should be presumed that the Dibrugarh Municipal Board, Dibrugarh was satisfied as regard the case of

the petitioner.

10. The respondent Nos.1 & 2 had not filed any affidavit-in-opposition. However, Mr. N. Goswami, the learned Government Advocate for the

respondent Nos.1 & 2 submitted that as per his instructions there is no record of any order being passed pursuant to the judgment and order dated

17.08.2017 in Title Appeal No.32/2013. The learned Advocate for the respondent Nos.1 & 2 further submitted that though a hearing had taken place

but the Dibrugarh Municipal Board had not passed any order and in fact an application was filed before the First Appellate Court seeking extension of

time for passing the order. On a specific query being made to the learned Advocate appearing on behalf of the respondent No.1 & 2 as to how

Dibrugarh Municipal Board has entered into a fresh Deed of Lease on 01.03.2019, the learned Government Advocate for the respondent No.1 & 2

submitted that he has no instructions to that effect, but he has definite instructions to the effect that the Dibrugarh Municipal Board has not carried out

the exercise as directed in the judgment and decree dated 17.08.2017 passed in Title Appeal No.32/2013.

11. Mr. N. N. Upadhyaya, the learned counsel appearing on behalf of the respondent No.4, on the other hand, submitted that he has already filed an affidavit-in-opposition detailing the fact therein as well as also filed an application seeking vacating of the order dated 18.12.2020. Drawing the attention of this Court to the Annexure-8 which is the minutes recorded as regards the submission made by the respective parties before the Dibrugarh Municipal Board the learned counsel for the respondent No.4 submitted that from a perusal thereof it would be seen that the respective submission was duly taken note of. However, there was no order passed pursuant thereto. The learned counsel for the respondent No.4 further drew the attention to Annexure-9 which is the communication dated 16.11.2017 issued by the Chairman, Dibrugarh Municipal Board to the First Appellate Authority requesting for extension of time for passing a speaking order as directed in the judgment and decree in Title Appeal No.32/2013 dated 17.08.2017. The learned counsel for the respondent No.4 further submitted by drawing the attention of this Court to the Annexure-12 of the affidavit-in-opposition which is a communication dated 02.08.2019 issued to the Chairman, Dibrugarh Municipal Board whereby the respondent No.4 had sought for a certified copy of the order wherein the Chairman, Dibrugarh Municipal Board had passed the order directing the authority to execute the Lease Deed in favour of the petitioner. The learned counsel for the respondent No.4 submitted that although the said application was sought for requesting for an order directing the authority to execute a Lease Deed but the Chairman, Dibrugarh Municipal Board had only provided the certified copy of the renewal of the Lease Deed and not the order passed in pursuance of the judgment and decree passed by the First Appellate Court dated 17.08.2017. The learned counsel for the respondent No.4, therefore, submitted that as of now the judgment and decree passed by the First Appellate Court has not yet been complied with and on the other hand, the Dibrugarh Municipal Board had granted a fresh lease to the petitioner dated 01.03.2019. It is under such circumstances the Executive Officer, Dibrugarh Municipal Board was justified in issuing the notice impugned in the instant proceedings.

12. I have heard the learned counsel for the parties and perused the materials on record. It appears from the judgment and decree passed by the First Appellate Court that there was a specific direction given to the Dibrugarh Municipal Board to review the order dated 12.06.1997 by giving a reasonable opportunity of hearing to both the parties and thereupon to pass a speaking order afresh. It was specifically directed that the whole process be completed within a period of three months from the date of receipt of a copy of the said judgment and order. The petitioner has not filed any order passed by the Dibrugarh Municipal Board in pursuance of the direction passed by the Court of the Civil Judge at Dibrugarh in Title Appeal No.32/2013. On the other hand, the respondent No.4 has placed on record the minutes of the hearing which was held on 15th November, 2017 wherein the respective contentions of were taken note of. It further appears from the communication dated 16.11.2017 issued by the Chairman, Dibrugarh Municipal Board that there was a request seeking extension for holding the review hearing with regard to the direction passed in the judgment and decree in Title Appeal No.32/2013 and thereby to grant another 90 days in that regard. Thereupon abruptly it appears that the Lease Deed was entered into with the petitioner on 01.03.2019. When the petitioner filed an application before the Chairman, Dibrugarh Municipal Board seeking a copy of the order so passed in pursuance of the direction passed in Title appeal No.32/2013, the Chairman, Dibrugarh Municipal Board rather than serving a copy of the said order had only provided a copy of the Lease Deed dated 01.03.2019. Thereupon when the matter came up to the attention before the Executive Officer, Dibrugarh Municipal Board he sought to comply with the direction passed by the First Appellate Court in Title Appeal No.32/2013 and accordingly had issued the impugned notice. The petitioner who is already the beneficiary of the action of the Dibrugarh Municipal Board therefore has filed the instant writ petition challenging the said action on the ground that the Dibrugarh Municipal Board has already adjudicated the said matter and granted a fresh lease dated 01.03.2019. The said case made out by the petitioner challenging the notice issued in 18.11.2020 on the face of it do not call for any interference on the ground that the Dibrugarh Municipal Board has not passed any speaking order as

directed by the First Appellate Court in Title Appeal No.32/2013 dated 17.08.2017. It has to be taken note of that the First Appellate Court was

categorical in passing the directions to pass a speaking order. As none of the parties could produce the order, the very edifice of the petitioner's

case does not exist for which the instant petition is devoid of any merits and consequently dismissed. The interim order passed earlier on 18.12.2020

accordingly stands vacated.

13. Before concluding, this Court would further like to observe and direct the Dibrugarh Municipal Board, Dibrugarh to forthwith take appropriate

action as directed in the judgment and decree dated 17.08.2017 in Title Appeal No.32/2013 by giving an opportunity to both the parties and thereupon

pass an order in accordance with law. This exercise be completed within a period of 2 (two) months from the date a certified copy of the instant order

is served upon the Chairman, Dibrugarh Municipal Board, Dibrugarh. Taking into account that there was no compliance to the judgment and decree

dated 17.08.2017, the Lease Deed dated 01.03.2019 is also interfered with.

14. In view of the above, the instant petition stands dismissed subject to the directions made herein above.