

(2023) 11 GAU CK 0047

Gauhati High Court

Case No: Writ Petition (Civil) No. 5528 Of 2012

M/S Tantia Constructions Ltd.
And Anr.

APPELLANT

Vs

Guwahati Metro Politan
Development Authority And 3
Ors

RESPONDENT

Date of Decision: Nov. 30, 2023

Acts Referred:

- Constitution Of India, 1950 - Article 14
- Guwahati Metropolitan Development Authority Act, 1985 - Section 25, 88

Hon'ble Judges: Sanjay Kumar Medhi, J

Bench: Single Bench

Advocate: S Chamaria

Final Decision: Dismissed

Judgement

1. Heard Shri P Das, learned counsel for the petitioners. Also heard Ms. S Chutia, learned counsel appearing for the GMDA.

2. The instant writ petition has been filed challenging a notice dated 11.11.2011 issued by the respondent no. 1 whereby the construction of the petitioners was directed to be demolished.

3. The petitioner no. 2 claims to be the owner of a Small Scale Industries, namely, M/S Tantia Construction Ltd. which is the petitioner no. 1 in this

petition. The said Industry is situated at Pamohi Village under Ramcharani Mouza of Azara Gaon Panchayat in the district of Kamrup. As per the

petitioners, the area falls under the gaon panchayat and is not covered under the Master Plan of 2025. The petitioner had accordingly started the

manufacturing unit after obtaining necessary permission from the concerned gaon Panchayat.

4. It is the case of the petitioners that in spite of the aforesaid facts and circumstances, the respondent no. 1 had issued a Show Cause Notice dated 17.09.2011 to the petitioner which was responded to on 27.09.2011. However, it is contended that without considering the said response, the impugned demolition notice dated 11.11.2011 has been issued. It is the case of the petitioners that their appeal against the impugned action has also been rejected.

5. Shri Das, learned counsel for the petitioners submits that there are serious doubt on the basis on which the respondent no. 1 had initiated the proceeding inasmuch as, according to the petitioners, the land does not come within the Master Plan and falls under the gaon Panchayat for which necessary permission was also granted. The learned counsel accordingly questions the jurisdiction of the respondent authorities in initiating the demolition process.

6. Alternatively, the learned counsel for the petitioners submits that in the meantime, many constructions have come up in the vicinity of the construction in question and therefore, in all likelihood, even if the area falls under the Eco-Sensitive Zone, the restrictions which were prevailing at that point of time appear to have been relaxed to a great extent and therefore, benefit of the same should be given also to the petitioners. It is submitted that the petitioner's unit is a running unit which manufactures readymix concrete.

7. Per contra, Ms. Chutia, learned counsel appearing for the GMDA by referring to the affidavit-in-opposition on 30.01.2013 has submitted that the entire premise on which the writ petition is structured is erroneous. It is submitted that under Section 88 of the GMDA Act, 1985, authority is granted to the GMDA to issue process of demolition for illegal construction. The learned counsel stoutly refutes the contention that the land in question does not fall under the Master Plan of 2025 and therefore, submits that the ground questioning the jurisdiction of the GMDA is baseless. The learned counsel for the respondent-GMDA has also placed before this Court the latest status report which has been communicated vide letter of April, 2023

along with which a report has been annexed. As per the said report, the Village, Pamohi in Ramcharani Mouza is included in Schedule-1 of the Master

Plan of 2025 as notified on 07.07.2009 as Special Scheme area. The report further states that the petitioners had violated Section 25 of the GMDA

Act and the proposal for No Objection Certificate submitted after issuance of the notice dated 11.11.2011 was also not in proper format. The report

reiterates that the construction in question falls under the Eco-Sensitive Zone. The rejection of the appeal of the petitioners has also been highlighted in

the report.

8. After considering the facts and circumstances, this Court is of the view that unless any relevant materials can be projected by the petitioners for

this Court to conclusively come to a finding that the area is outside the area of Master Plan of 2025, the premises on which the writ petition has been

structured cannot be accepted. The stand of the respondent authorities is clear that the area in question is included in Schedule-1 of the Master Plan

of 2025 which was notified way back in 07.07.2009.

9. As regards the contention made on behalf of the petitioners that certain constructions have come up in the vicinity of the constructions in question,

apart from the rights guaranteed under Article 14 of the Constitution of India being positive in nature, without being given details of any such

constructions and the illegalities, if any involved, this Court cannot accept the aforesaid submission.

10. In view of the above, this writ petition is dismissed.

11. Written instruction of April, 2023 along with the report is made a part of the records.