

Govt.of Assam and Ors., etc Vs XXXXXXX

Court: Gauhati High Court

Date of Decision: March 3, 2008

Acts Referred: Constitution of India, 1950 Article 226, 226

Citation: AIR 2008 Guw 141 : (2008) 4 GLR 273

Hon'ble Judges: J.Chelameswar, C.J.; RANJAN GOGOI, J and B. P. KATAKEY, J

Bench: Full Bench

Advocate: B. C. Das, Amicus Curie, B. J. Talukdar, B. Goswami, L. G. Ahmed, M. Hazarika, A. Ajitsaria, S. Samaria, B. P. Todi, P. K. Barman, P. Choudhury, R. D. Choudhury, D. C. Mahanta, K. K. Das, A. D. Choudhury, N. Saikia, Advocates appearing for Parties

Judgement

Ranjan Gogoi, J.

All the writ petitions under consideration bear several resemblances which justified analogous consideration thereof by

the Court on several dates ending on 10th of January 2008. All the writ petitions were registered suo motu on the basis of communications

addressed to the Honble Chief Justice of this Court by public spirited individuals highlighting gross deficiencies in the living conditions available in

the premier city of the North East i.e. Guwahati. All the writ petitions under consideration raise common issues of the obligation of the State in this

regard and the power of judicial interventions in the matter keeping in mind the availability of judicially acceptable resources. Hence the present

attempt to answer all such questions arising in the writ petitions by means of the present common order.

2. WP (C) 1200 of 2006 raises questions centering around the construction of multistoried apartments and commercial buildings in the City of

Guwahati and the extent of control exercised by the Gauhati Municipal Corporation (GMC) and the Guwahati Metropolitan Development

Authority (GMDA) while granting permissions for such constructions as well as the control and supervision exercised, if any, to ensure that the

constructions raised conforms to the permissions granted.

3. In WP (C) No. 2238 of 2006 the available civic amenities within the city of Guwahati, particularly the provisions for sanitation and drainage, is

the prime issue that had arisen for consideration of the Court. The public spirited individual at whose instance the said writ petition was registered,

one Prof. Deven Dutta, had the misfortune of falling into one of the existing drains in the city of Guwahati through an open manhole. The necessity

of providing manhole covers; the feasibility of leaving no drain uncovered and improvement of the conditions of the roads within the city of

Guwahati are supplementary issues that confronted the Court on account of unfortunate incident that had occurred in the case of Prof. Dutta.

4. In WP (C) No. 1942 of 2006 the problem of water logging and the conditions of road within the city of Guwahati are the two

primary issues that were raised whereas in WP (C) No. 2552 of 2006 rampant constructions on the riverfront thereby posing a threat to the

enormous potential of scenic beauty of the river Brahmaputra is the question that has been highlighted.

5. In the last writ petition under consideration i.e. WP (C) No. 2807 of 2006 the absence of a Master Plan for the City of Guwahati and instead

the preparation of a restricted document termed as City Development Plan has been sought to be questioned. The preparation of the aforesaid

document by a private company i.e. Infrastructure Leasing and Financial Services (ILFS), which is alleged to be not an urban planner, is another

question raised.

6. Considering the issues raised in the writ petitions the Court, in public interest, had not remained unresponsive to the call of the citizens at whose

instance the said writ petitions were registered. Limited interventions made on different dates by the Court had compelled the two civic bodies i.e.

GMC and GMDA to come out with the lists of buildings for which permissions have been granted though, naturally, the said list/lists had been

submitted to the Court in a phased manner. The lists so submitted showed some instances of building permissions being granted in a somewhat

indiscriminate manner but more particularly the said lists showed that majority of the buildings already constructed or under construction have

deviated in one manner or the other from the building permission granted by either of the two authorities. This had led the Court, at one stage, to

put an embargo on the grant of building permissions for multistoried constructions (order dated 26/5/2006 passed in WP (C) No. 1200 of 2006)

which was modified on 22/11/2006 by requiring the authorities to notify the revised Building Byelaws and consider all pending applications for grant

of permission for construction of high rise buildings in accordance with such revised Byelaws. The aforesaid action on the part of the Court led to a

new set of Building Byelaws of the GMDA and GMC to be notified with effect from 27/11/2006 and 28/11/2006 respectively.

7. While the aforesaid were going on, the GMC and the GMDA continued to file before the Court the monthly list of building permissions granted

and the stages of constructions raised on such basis. The information made available had revealed gross irregularities both in the matter of accord

of permissions and constructions of buildings for which permissions were granted. The Court, therefore, had to intervene on 27/9/2007 to issue

directions halting constructions and for identification of the officers of the GMC and the GMDA who are responsible for lack of supervision and

inspection over the constructions raised by the builders and on such identification being made, for departmental action against such officers. In the

proceedings that were held on 6/12/2006 in connection with WP (C) No. 1200 of 2006 it was noticed by the Court that even in the revised

Byelaws of the two civic bodies, which were brought into force in November 2006, there were several lacunae which had the potential of adding

to the chaotic conditions of urban life in Guwahati. In that context the Court had occasion to have a cursory look at the Master Plan for the City of

Guwahati prepared for the period up to 2025 which is presently at the draft stage. Thereafter, the Court expressed its view that the draft Master

Plan may require further examination and scrutiny. In such a situation the Court left it to the wisdom of the State Government to consider the

necessity/feasibility of imposing a moratorium on raising of highrise buildings, at least, in certain parts of the City of Guwahati. By the aforesaid

order dated 6/12/2007 the Court had put a restraint on the grant of building permissions beyond the first floor either by the GMDA or GMC. WP

(C) 1200 of 2006 was, thereafter, taken up by the Court on 10/1/2008 on which date an affidavit had been filed by the Deputy Secretary to the

Govt. of Assam, Guwahati Development Department, stating, inter alia, that the revised Building Byelaws of 2006 are adequate to answer the

immediate needs of planned development of buildings in the city of Guwahati. Insofar as the draft Master Plan is concerned, it has been stated, in

the affidavit filed, that suggestions/objections numbering 287 have been received and that an expert committee has been constituted to examine

such objections/suggestions and also to suggest modifications. The Deputy Secretary, in the affidavit filed, has also recited the work undertaken by

the committee till date.

8. In WP (C) No. 2238 of 2006 the initial intervention of the Court extended to the constitution of a special team by the Court

to inspect different parts of the City and report back to the Court the present stage of civic amenities available. The report/reports so submitted

highlighted the absolute breakdown of such amenities in the city of Guwahati which compelled the Court to hold that it would be justified for it to

step out of its normal discharge of adjudicatory duties and to visualize ways and means by which reasonable civic amenities can be provided to the

citizens consistent with their rights under Article 21 of the Constitution. In this regard the Court was informed that there were already two other

writ petitions i.e. WP (C) No. 2552 of 2006 and WP (C) No. 2807 of 2006 wherein the preparation of the Master Plan for the City of Guwahati

upto the year 2025; preparation of a City Development Plan and projects for execution of different schemes under the Jawaharlal Nahru National

Urban Renewal Mission (JNNURM) were being considered by the Court. The Court, therefore, called for the records of the two cases referred

to earlier and in its order dated 952007 recorded the details of the schemes contemplated under the JNNURM and the manner in which

preparation and examination of projects under the said scheme were contemplated for betterment of the living conditions in the urban

conglomerates of the country including the city of Guwahati. The Court took note of the fact that under the guidelines laid down by the JNNURM,

projects in respect of the following subject matters are covered by the objectives of the Mission and therefore could be executed for the city of

Guwahati if such projects are to be approved.

1. Urban Renewal i.e. redevelopment of inner (old) city areas (this would include items like widening of narrow streets, shifting of

industrial/commercial establishments from nonconforming to conforming areas to reduce congestion, replacement of old and wornout water pipes

by new/higher capacity ones, renewal of sewerage/drainage/solid waste disposal systems, etc.).

2. Water Supply (including desalination plants) and sanitation.

3. Sewerage and Solid Waste Management.

4. Construction and improvement of drains/storm water drains.

5. Urban Transport, including roads, highways/expressways/MRTS/metro projects.

6. Parking lots/spaces on Public Private Partnership basis.

7. Development of heritage areas.

8. Prevention and rehabilitation of soil erosion/landslides only in case of Special Category States where such problems are common and

9. Preservation of water bodies.

After taking note of the specific areas of urban city life that could be covered under different projects under the JNNURM the Court also took

note the action taken by the State of Assam under the JNNURM till the date of the order i.e. 952007. The specific part of the said order dated

952007 may be conveniently extracted herein below :

Once project reports under any of the above subjects are submitted, the same are required to be scrutinized and approved and thereafter funds

are to be released. Insofar as the North Eastern States are concerned, 90% of the funds are requirement is to be provided by the Central Govt.

and 10% by the State. The Central share of the funds are to be released only after adequate budgetary provisions are made by the State in respect

of its 10% share.

It must also be put on record that under the guidelines in force the authority(s) who are required to scrutinize and examine the project reports

submitted and approve the same and once funds are released to monitor the said projects are all earmarked authorities.

From the above it is, therefore, clear that if the city development plan for Guwahati has been approved by the competent authority the next step

that would be required to be taken is to prepare the detailed project reports covering the permissible areas/subjects and submit the same to the

concerned authority for approval and release of funds. How many of such project reports have been prepared and submitted; how many have

been approved; how many are in the process of preparation and how many more are visualized are facts that are not clear to this Court. The stand

taken at the hearing by Sri B. J. Talukdar, learned Govt. Advocate as well as Smt. M. Hazarika, learned counsel appearing for the GMDA,

however, would seem to indicate that some of such project reports are presently at different stages of preparation for submission to the concerned

authority. If that be so, the Court can only

express its views that the civic amenities within the City of Guwahati, as evident from the materials on record, having reached an almost break

down point, there is need for utmost expedition on the part of the State to prepare project reports covering different permissible areas of civic

amenities as visualized by the guidelines of the JNNURM and thereafter to submit the same to the appropriate authority. Regardless of what has

happened in the past, the Court is confident that the State will now act with utmost expedition in the matter and do all that is necessary to ensure

that the benefits that can come to the City of Guwahati under the JNNURM be made available at the earliest so that the citizens can be ensured of

better civic amenities. The State will, therefore, act accordingly and will also apprise the Court within the next two weeks, by filing a detailed

affidavit, its stand in the matter including the various steps undertaken by it under the JNNURM.

Office to list this case along with WP (C) Nos. 2552/2006 and 2807/2006 after two weeks.

9. Thereafter, on 28/8/2007 the Court recorded the progress made with regard to the different projects under the JNNURM. It was also recorded

by the Court on 27/9/2007 that detailed project reports in respect of solid waste management, water supply, sewerage and drainage, urban

transportation, beautification of riverfront of Guwahati as well as housing for the urban poor are at different stages of preparation. The affidavit filed

on 1012008 by the Deputy Secretary to the Govt. of Assam, Guwahati Development Department, reiterates the said facts save and except that

insofar as the project report for solid waste management is concerned the same has reached the stage of implementation by grant of work on the

basis of open bidding.

10. The above position, as indicated above, would squarely cover the issues arising in the other three writ petitions i.e. W.P. (C) No. 1942 of

2006 (dealing with water logging and conditions of road), WP(C) No. 2552 of 2006 (construction on the riverfront) and WP (C) No. 2807 of

2006 (preparation of the City Plan by Infrastructures Leasing and Financial Services). In this regard it must be put on record that in WP (C) No.

2807 of 2006 the writ petitioner, Sri Indrajit Barua, had contended that he had conceptualized a plan for development of Guwahati which though

submitted to the Government had not been receiving its due attention. Instead, a city development plan has been prepared by Infrastructure

Leasing and Financial Services which is not an urban planner and further that the said city development plan had put the preparation of the Master

Plan of the City of Guwahati on the back burner. In this regard, the affidavit filed by the different authorities of the State must be taken note of. The

said affidavits, in short, seeks to explain the fundamental difference between the Master Plan and the City Development Plan by terming the later

document to be a limited vision document restricted in its operation to the areas covered under the JNNURM. According to the respondent

authorities, the City Development Plan which is the basic document for identification of the areas where projects under the JNNURM are to be

prepared for execution was finalised by the joint participation of the GMDA and Infrastructure Leasing and Financial Services which later body is

one of the empanelled bodies for preparation of city development plans under the JNNURM. The said body is, for all purposes, a Government of

India organization. In addition, it has been stated, in the affidavit filed, that the Infrastructure Leasing and Financial Services has been involved in

the preparation of the city development plans for Joypur, Ajmeer, Asansol, Durgapur, Indore and Dhanbad.

11. Having noticed the interventions made by the Court till date and the results emanating from such interventions the Court now has to consider as

to whether any further intervention by way of additional directions will be necessary.

12. Human life is a divine gift, however, with a fixed tenure clause. Human history has been a story of experiments, often violent and bloody, all

directed to carry out an orderly management of human life by achieving what is perceived to be the most suitable and acceptable control

mechanism. The values embodied under the Indian Constitution is the ultimate result of the said evolutionary process till date. The dynamism inbuilt

in our Constitution and the elasticity of the values enshrined therein to answer a whole host of questions that the future may hold stands suitably

demonstrated by the satisfactory experience till date. Without prioritizing, the provisions contained in Part III of the Constitution have shown

remarkable flexibility to answer the fast changing needs of an evergrowing social order. Article 21, in all its manifestations, stand out, if only,

illustratively, to vindicate what has been stated above. It is the provisions of the

above part of the Constitution that obliges the State to provide acceptable living conditions, conducive to good health and mental well being of the

citizens of the country. The action or actions of the State or its inaction, as may be, in this regard, therefore, has to be tested on the touch stone of

the constitutional obligations of the State cast by Article 21.

13. However, what must be emphasized is that the availability of the power of judicial review is not a sine qua non for free exercise thereof. In a

written constitution where the judiciary has been entrusted with the task of interpreting its provisions the power of judicial review of every

Governmental action or inaction is inherent. All State action, therefore, would be amenable to judicial scrutiny for the purpose of ensuring that such

action conform to the provisions of the Constitution. Doubts about the justiciability of an issue before the Court have been expressed, from time to

time, not because of the lack of availability of the power but on account of availability of judicially manageable standards to ensure that the decision

arrived at leaves no room for any unintended error. This is the view expressed by the Apex Court in AIR 1995 SC 1403 (A. K. Kaul v. Union of

India). It is in the above context that the Court must proceed to examine the availability of the basic standards/yardstick that would enable the

Court to arrive at a just and correct conclusion on the issues confronting it in the present bunch of cases.

14. A wide range of complex questions that can only be answered by correct application of technical, engineering and architectural parameters and

which also have significant financial implications for the State should not be entered into by the Court merely because the power of judicial review

is available. The Courts have never assumed the judicial arm to be the sole repository of constitutional values and duties. The other two organs are

vested with equal responsibility in the matter and it is only by an effective coordination and the joint efforts of all the three organs that the

Constitution would continue to reign supreme. The necessity and obligation of tuning all State actions to the requirement of Article 21, therefore, is

the equal responsibility of the executive and the legislative arms of the State and the said two organs must, in appropriate cases, be left free to

perform such obligations according to its wisdom and policy. Having said that, we are of the considered opinion that it will not be correct on our

part to cause any further intervention in the matters under consideration keeping in mind the facts before us and the present stage of progress and

development particularly under the JNNURM.

15. We are, therefore, of the view that the present writ petitions will not call for any further interference and/or directions save and except that the

process of monitoring of the constructions raised and/or being raised in terms of building permissions granted either by the GMDA or GMC would

continue and all nonconforming constructions as well as erring officials be dealt with in accordance with law. We further direct that, henceforth,

building permission will be granted only for plans which conform to the requirements of the Byelaws in force. The adequacy of the Byelaws in the

context of the mushroom growth of highrise buildings in the city of Guwahati and in the light of the existing infrastructure in terms of width of roads

and size of the plots available shall be considered by the Government, from time to time, and suitable amendments/changes as may be required will

be enforced. The Master Plan for the city of Guwahati shall be finalized after due consideration of all objections and suggestion as may have been

received. The preparation of the different project reports and execution of such projects as have been approved under the JNNURM will

continue. Any person aggrieved by any specific action taken or inaction committed by any authority of the State in the matter under consideration

will be at liberty to move this Court, if so advised.

16. With the above observations and directions all the writ petitions under consideration shall stand closed. All other interim orders passed will be

understood to have been vacated by us.

Order accordingly.