

(1993) 10 GAU CK 0006

Gauhati High Court

Case No: Civil Rule No. 2632 of 1992

Guwahati Municipal Karmi
Sangha Represented By Its
Organising Secretary Sri
Prafulla Baruah

APPELLANT

Vs

Guwahati Metropolitan
Development Authority and Ors.

RESPONDENT

Date of Decision: Oct. 14, 1993

Acts Referred:

- Gauhati Metropolitan Development Authority Act, 1985 - Section 21(2), 21(2)
- Gauhati Municipal Corporation Act, 1971 - Section 7, 7

Citation: (1994) 1 GLJ 25

Hon'ble Judges: S.N.Phukan, J

Bench: Single Bench

Advocate: B.L.Singh, P.K.Bora, N.K.Singh, N.Devi, B.Chakraborty, N.Dutta, Advocates
appearing for Parties

Judgement

1. This writ petition under Article 226 of the Constitution has been filed in a representative character by the Guwahati Municipal Karmi Sangha represented by its Secretary against Guwahati Metropolitan Development Authority, respondent No. 1, Additional Chief Secretary to the Govt. of Assam, respondent No. 2 and also Chief Executive Officer, Guwahati Metropolitan Development Authority and Commissioner, Gauhati Municipal Corporation, respondent No. 3 and 4 respectively. The State of Assam has also been made respondent No. 5.

2. The dispute is regarding whether the Guwahati Metropolitan Development Authority constituted under the Guwahati Metropolitan Development Authority Act, 1985 can be entrusted as the sole authority for granting permission for construction of building by an executive order issued by the Additional Chief Secretary to the Govt. of Assam on 21st November, 1992 vide Annexure D to the writ petition, to the

exclusion of the Guwahati Municipal Corporation which is a body constituted under the Gauhati Municipal Corporation Act, 1971. By the above order dated 21st November, 1992, the Commissioner of Gauhati Municipal Corporation was informed that in the first meeting of the Guwahati Metropolitan Development Authority, for short, GMDA, it was decided that with the constitution of Guwahati Metropolitan Development Authority all building permissions within the jurisdiction of GMDA will be given only by that authority and Guwahati Municipal Corporation, for short GMC, will stop performing the function. From the said impugned order it appears that it was also decided that necessary staff will be transferred from GMC to GMDA. It was also agreed to that with effect from 31st of March, 1992 GMC will stop issuing building permission and in the meantime all pending cases will be disposed of. It appears from the said impugned order that the Chief Executive Officer, GMDA also assured the Additional Chief Secretary that necessary technical competence and staff for disposing of the applications in expeditious manner are already available with GMDA and there will be no dislocation of work.

3. According to writ petitioner, GMDA is not empowered to issue building permission under the provisions of GMDA Act, 1985, for short the Act of 1985 and the power given to GMDA under that Act only relates to broader issues relating to general development of lands and other development schemes. Petitioner has averred that for granting building permission powers have been vested with GMC under Gauhati Municipal Corporation Act, 1971 for short the Act of 1971. In this connection reference has been made to section 327 to section 347 of the said Act. Reference has also been made that though GMC was superseded by the State Govt. in 1981 till date no election has taken place and the Commissioner, GMC is only an executive head and under the provisions of the Act of 1971, he is not competent to transfer any power granted by the Act in absence of Mayor and/ or elected representatives and the Standing Committee of the Corporation.

4. As stated above, according to petitioner GMDA was constituted with the main object to formulate schemes and basic structure for the Master Plan and to scheme out plan by "Zonal Division" of the various parts of the city. Petitioner has alleged that it is illegal and unconstitutional on the part of GMDA to take away the power and/or acquire power which is not vested under the Act on GMDA by backdoor policy. The petitioner has also challenged the provisions of the Act of 1985. Petitioner apprehends that if the impugned order is given effect to, large number of employees of GMC will be thrown out of jobs and in addition, revenue of GMC will also be affected. Hence, the present petition praying for appropriate writ for quashing the provisions of the Act of 1985 and also the letters and Notifications dated 23.3.92 and 21.11.92, Annexures C and D to the writ petition.

5. A counter affidavit has been filed on behalf of GMDA by the Chief Executive Officer of the said authority. No counteraffidavit has been filed on behalf of GMC.

6. It may be stated that by order dated 7.12.92, this Court directed that no file relating to building permission shall be transferred by the GMC to GMDA. Writ petitioner filed an application for a interim direction to GMDA not to issue any building permission and further to direct the GMC to issue building permission. It was also prayed that till final disposal of this petition GMC may be directed not to transfer any employee to GMDA. This application was registered as Misc. Case No. 338 of 1993. Counteraffidavit was also filed and as agreed to by the learned counsel at the Bar both the main Civil Rule and the Misc. Case were taken up for final disposal.

7. In the counter filed on behalf of respondent Nos. 1 and 3 it has been stated that Assam Town and Country Planning Act, 1959 was enacted with a view to provide development of the town and country side in the State on sound planning principles with the object of securing proper sanitary condition and to conserve and promote public health, safety and general welfare of the people. The said Act also provides constitution of Development Authority and also Master Plan and Zoning Regulations. According to said Act no person shall use any land, subdivide any land by transfer, gift, sale etc. or set up any new structure on any land covered by the Master Plan or change the existing structure within the said Master Plan except with the permission of the authority under the Act. This Act of 1959 also empowered the authority constituted under the Act to stop development of land and structure which contravene Master Plan and Zoning Regulations and also to impose penalty for violation of any provision of the Act. Under the said Act GMDA was constituted in the year 1961 and bylaws, Master Plan and Zoning Regulations were duly notified in the year 1965. This procedure continued till enactment of the GMC Act, 1971 and this Act provided that the Assam Municipal Act, 1956, Assam Panchayat Act, 1959 and Assam Town and Country Planning Act, 1959 shall cease to operate within the city of Guwahati. The Act of 1971 was again amended in the year 1979 to the effect that the Assam Town and Country Planning Act, 1959 shall apply within the territorial limits of the GMC. Therefore, GMDA resumed its functions to issue permission for development of land and structures of building within the Master Plan area which also included area under GMC. According to respondents after the amendment of 1979, GMC has no authority to issue building permission, but for a brief period i.e. 1974 to 1979 GMC enforced Master Plan and Zoning Regulations and also building bylaws framed by the GMDA. Respondents have alleged that GMD Authority Act, 1985 which came into force with effect from 1.4.92 intended to provide for establishment of an authority for the enforcement and execution of the Master Plan and for the formulation and execution of schemes for the plan development of Guwahati Metropolitan Area for coordination and supervision of the execution of such plan and schemes with the object of securing proper living and sanitary condition and to conserve and promote public health, safety and general welfare. The Act of 1985 provides that after coming into operation of the Master Plan in the Guwahati Metropolitan Area no person or body shall use or permitted to be used

any land, subdivide any land etc without obtaining permission in writing from the authority constituted under the above Act of 1985. It has been averred by the respondents that the Act of 1985, inter alia, provided that relevant sections of the Act of 1971 shall stand repealed from the date on which GMDA was constituted and any order passed under the Act of 1985 notwithstanding anything inconsistent in any enactment, the said order shall be valid. It has also been urged that by the Act of 1985 section 327 to 331, 335 and 338 of Act of 1971 stood repealed being inconsistent with the provisions of the Act of 1985 and consequently the power of GMC in relation to granting of permission for construction of building has become inoperative. Mention has also been made that the Govt. of Assam by Notification dated 23.3.92 brought the Act of 1985 in force with effect from 1.4.92 and declared by Notification issued on the same date that the Greater Guwahati Master Plan Area shall be the Guwahati Metropolitan Area under the Act of 1985. It has also been mentioned that by Notification dated 23.3.92 the Guwahati Development Authority constituted under the Town and Country Planning Act of 1959 was declared to be dissolved and by a separate Notification the GMDA was constituted with 18 members under section 5 of Act of 1985 and the said authority, namely GMDA also adopted the Master Plan and Zoning Regulations for Greater Guwahati prepared by the Director, Town and Country Planning Department and notified by the Govt. by a Notification dated 25.9.86. The GMDA also adopted the building bylaws as notified by the erstwhile GDA. According to respondents as the object of the Act of 1985 is for planned development of the Guwahati Metropolitan Area, there was no overlapping function between the GMDA and GMC and GMC is to assist the GMDA in implementing the provisions of the Act of 1985. It has also been denied that with the formation of GMDA, revenue of GMC would be taken away. According to respondents GMC has no authority to issue permission for development of land and structure even before the Act of 1985 came into force.

8. Heard Mr. N. Dutta, learned counsel for the writ petitioner and Mr. AB Choudhury for Guwahati Municipal Corporation and Dr. NK Singh, for Guwahati Metropolitan Development Authority. It may be stated that Dr. Singh has also filed written argument on behalf of respondent No. 1.

9. The question that has to be decided in this case is whether under both the Acts, permission for construction of building is necessary to be obtained from the Guwahati Municipal Corporation as well as Guwahati Metropolitan Development Authority or whether after the Act of 1985 came into force GMDA is the only authority to grant permission for construction of building and not GMC. For this purpose interpretation of the relevant provisions of the Act is necessary and this Court has also to consider whether by implication, provisions for granting permission by the GMC under the Act of 1971 has been repealed after the coming into force of the Act of 1985. To appreciate this point it would be necessary to quote relevant provisions of both the Acts.

10. The Act of 1985 namely GMDA Act, 1985 was enacted with the object of planned development of Guwahati Metropolitan Area and for the enforcement and execution of various schemes for its development.

11. From the long title of the Act it appears that the Act was enacted to provide for establishment of an authority for planned development of Guwahati Metropolitan Area and matters connected therewith. From the preamble of the Act it appears that it is expedient to provide for the establishment of an authority for the enforcement and execution of the Master Plan and for formulation and execution of the schemes for planned development of Guwahati Metropolitan Area, for coordination, supervision and execution of such plans and schemes with the object of securing proper living and sanitary conditions and to conserve and promote public health, safety and general welfare of the people living therein and for matters connected therewith. Thus from the long title and preamble of the Act it is very clear that the main function of GMDA under this Act of 1985 was to prepare and enforce Master Plan and other schemes for development of the Guwahati Metropolitan Area.

12. Section 6 of the Act of 1985 defines functions and powers of the authority viz GMDA which, inter alia, provides the function of the said authority shall be to promote and secure the development of Guwahati Metropolitan Area according to Master Plan. Under subsection (2) of the said section some of the powers and functions of the GMDA have been laid down and are as follows :

"6. (2) (a) to carry out or cause to be carried out surveys of the area and to prepare report or reports of such survey;

(b) to prepare Master Plan for the Guwahati Metropolitan Area;

(c) to enforce and execute the Master Plan for Guwahati Metropolitan Area;

(d) to prepare and execute development schemes;

(e) to coordinate development activities of all departments and agencies of the State Government or local authorities operating within the Guwahati Metropolitan Area;

(f) to carry out or cause to be carried out of such works as are contemplated in the Master Plan;

(g) to acquire, hold and manage such property with movable and immovable, as the Guwahati Metropolitan Development Authority may deem necessary for the purpose of any of its activities and to lease, sell otherwise transfer any property held by it;

(h) to purchase by agreement or to take on lease or under any form or tenancy, any land and to erect thereon such buildings or structures and to carry out such operations as may be necessary for the purpose of carrying on its undertakings;

(i) to enter into or perform such contracts as may be necessary for the performance of its duties and for exercise of its power under this Act;

(j) to perform any other function which is supplemental, incidental or consequential to any of the functions aforesaid or which may be prescribed.

13. Chapter II of the Act lays down the procedure for preparing the Master Plan including Zoning Regulations for the Guwahati Metropolitan

Area by GMDA and according to section 20 of the said Act draft plan has to be published calling for objections. Section 21 of the Act, inter alia, provides that after Zoning Regulations have been approved by the State Govt., GMDA shall publish the same and a copy shall be made available for inspection. Subsection (2) of the said section 21 is relevant and is quoted below :

"21. (2) After the coming into operation of the Master Plan and Zoning

Regulation, it shall be the duty of the Guwahati Municipal Corporation or any other local authority, within whose jurisdiction such area or zone is situated to enforce such regulatory measures in supersession of the rules and regulations, if any, applicable to such area or zone."

Thus, it appears that the legislature envisaged the authority of the GMC and its function and therefore, it was provided in the said subsection that after the Master Plan and Zoning Regulations come into operation, the GMC or any other local authority shall enforce the above Master Plan and Zoning Regulations.

14. Section 23 of the Act, inter alia, provides that after coming into operation of any Master Plan in any area under subsection (1) of section 21 no person or body including department of the Govt. or local authority shall use or permit to be used any land, subdivide any land by transfer, gift etc. or set up any new structure on any land covered by the Plan or change the existing structure or any building or use any building or land within the area covered by the Plan except with the permission of the GMDA.

15. Therefore, under section 23 of the Act, the power of GMDA is limited only to enquire that land is not used or divided in violation of the provisions of the Master Plan without permission of GMDA. Therefore, the powers of the GMDA is limited to that extent only.

16. Section 24 of the Act, inter alia, provides that no development, institution or change of use of any land shall be undertaken or carried out within Guwahati Metropolitan Area without permission in writing from the authority as provided in the said section. Section 25 is important, more particularly, subsection (4). This section, inter alia, provides that any person or body or a department of the Govt. intending to carry out any development on any land shall make an application in writing to the GMDA for such permission and such application shall be accompanied

by the plan. Subsection (4) of the above section 25, inter alia, provides that the GMDA shall not refuse permission except on the ground of contravention of proposals contained in the plan or Zoning Regulations and unless permission has been refused within a period of one month it shall be presumed that permission has been granted.

17. Therefore, reading all the above sections it is clear that the powers of the GMDA is limited as it has to ensure that building or any other construction is not carried on in violation of the Master Plan or Zoning Regulation. As stated above it is very clear that legislature was also quite aware of the existence of the GMC and therefore, it has provided that the said Corporation shall take note of the fact the Master Plan or Zoning Regulations framed by GMDA.

18. Section 28 of the Act of 1985 is regarding subdivision of land and such subdivision has to be made after notice to GMDA and in accordance with standard prescribed by the State Govt. According to section 31 of the Act of 1985 if the lay out or construction is not proceeding according to sanctioned plan or in violation of any of the provision of the Act of 1985, GMDA shall serve a notice on the applicant requiring him to stay further execution until correction has been effected in accordance with the approved plan.

19. Section 35 of the Act is regarding declaration of development areas and preparation of development schemes Section 36 of the Act is regarding scope for development schemes and section 37 is regarding contents of the schemes. According to section 39 after the scheme is prepared under section 35 of the Act, the GMDA or the officer of the Govt. or local authority shall publish the scheme in the Official Gazette and news papers.

20. According to section 48 after a scheme comes into force any person continuing to occupy any land which he is not entitled to occupy under the scheme may be summarily evicted by GMDA or any officer authorised in this behalf. Section 49 of the Act empowers the authority after publication of the scheme under section 39 to remove, pull down or alter any building or other work in the area included in the scheme which contravenes the scheme or in the erection of which or carrying out of which any provision of the scheme has not been complied with. Section 50 of the Act inter alia provides that where any area has been developed by the authority namely GMDA the said authority may require the local authority within whose limit the area so developed is situated to assume responsibilities for the maintenance of the amenities which have not been provided by the authority but in the opinion of GMDA should be provided in the area it may be entrusted to such local authorities on the terms and conditions stated in the said section. According to clause (13) of section 2 of the Act of 1985 local authority means also GMC. In other words reading the above section it is very clear that the amenities which could not be provided by the GMDA may be provided by the local authority namely GMC on the terms and conditions stated in the said section.

21. Section 85 of the Act of 1985 is relevant which, inter alia, provides that any person who undertakes or carries out development or changes use of any land or building in contravention of the provisions of the Master Plan or Zoning Regulations without permission as required under the Act of 1985 and in contravention of any condition of the permission so granted shall be punishable under the said section. Section 88 of the Act empowers the GMDA to remove by demolition etc. any building etc. in a place where any development has commenced or is being carried out or has been contemplated if such construction is in contravention of the Master Plan or development scheme or without permission or approval or sanction under section 25 or 30 of the Act.

22. To sum up, the Act of 1985 was enacted for constitution of an authority for planned development of Guwahati Metropolitan Area and matters connected therewith or incidental thereto. Such authority has power to prepare Master Plan for development and also Zoning Regulations and the authority, namely GMDA has got limited power to ensure that no construction and subdivision of land takes place in violation of the Master Plan and Zoning Regulations. This Act also lays down that all the local authority including GMC shall abide by such Master Plan, Zoning Regulations or development plan of GMDA. While granting permission by GMC for construction of building and/or reconstruction of any building or subdivision of any land, permission is also necessary from GvsDA and while granting such permission, the powers of the GMDA is limited, inasmuch as, it has to ensure that construction or reconstruction of such building or subdivision of any land is not in violation of the Master Plan, Zoning Regulations or plan for development. The GMDA has also power to demolish any structure if it violates the provisions of Master Plan, Zoning Regulation or development activities.

23. I may now refer to section 126 of the above Act of 1985 which provides that relevant sections of GMC Act, 1973 (Assam Act of 1973) alongwith the amendments which are in consistent with the provisions of this Act of 1985 shall stand repealed with effect from the date on which GMDA is constituted. In view of the above limited powers of GMDA whether any provision of the GMC Act is inconsistent with the provisions of this Act of 1985 or whether both the Acts may hold the field together will be considered at the relevant time.

24. From the long title and the preamble of the Act of 1985, I find that the Act of 1985 has been enacted for establishment of GMDA mainly for the purpose of planned development of the Guwahati Metropolitan Area and the matters connected therewith or incidental thereto and GMDA has to prepare Master Plan, get it approved and the said Master Plan and Zoning Regulations so that the city of Guwahati can be developed in a planned manner. I am constrained to say that it has not been done so far in spite of the fact that GMDA was constituted long back.

25. It appears from the provisions of the Act that before constitution of GMDA such functions and authority for planned development of the city of Guwahati were

entrusted to the authority constituted under the Assam Town and Country Planning Development Act, 1959.

26. The power of giving permission after coming into force of the Master Plan and Zoning Regulations to carry out any development on any land and for use of any land and building, is with the GMDA and such permission can be refused only on the ground of contravention of the proposal contained in the Master Plan or Zoning Regulations. Thus, GMDA has no power to refuse development of any land or constructions of any building except any ground stated above. GMDA has also power to grand subdivision of private land as per provisions of section 28 of the Act. According to section 48 as stated above after the commencement of any scheme under the Act if any person continue to occupy any land which he is not entitled to occupy under the scheme prepared under the Act of 1985 he may

be evicted by GMDA or any other officer authorised in this behalf. Section 49 also empowers GMDA to remove, pull down or alter any building or other work in the area included in the scheme prepared under the Act if it is 10 done in contravention of the scheme.

27. Thus reading the provision of the Act and also from the intention of the legislature I hold the power of GMDA is limited regarding permission for construction of any building or development of any land. Such development and construction has to be done in accordance with the Master Plan and Zoning Regulations prepared by the GMDA and for such construction or development, permission has to be obtained from GMDA and such permission cannot be refused if such development or construction is in accordance with the Master Plan and Zoning Regulations.

28. I quote below sections 327 to 347 of the GMC Act, 1971.

327. Prohibition of erection or reerection of buildings without permission No person shall

(i) erect or reerect any building; or

(ii) commence to erect or reerect any building; or

(iii) make any material external alteration to any existing buildings;

(iv) construct or reconstruct any projecting portion of a building which the Commissioner is empowered to require to be set back or is empowered to give permission to construct or reconstruct

(a) unless the Commissioner or the Engineer so empowered has either by an order in writing granted permission or has failed to intimate within the prescribed period his refusal to grant such permission; or

(b) after the expiry of one year from the date of the said permission or such longer period as the Commissioner may allow;

Provided that nothing in this section shall apply to any work, addition or alteration which the Corporation may byelaw declare to be exempted,

328. Notice of building (1) Every person who intends to erect or rerect a building shall submit to the Corporation

(a) an application in writing for approval of the site together with site plan of the land, and documents of title and, in the case of land which is the property of the Government or of the Corporation a certified copy of the documents authorising him to occupy the land and if so required by the Commissioner, the original document or documents; and . (b) an application in writing for permission to execute the work together with a ground plan, elevations and sections of the building and a specification of the work.

(2) Every plan of any building to be constructed wholly or partly of masonry submitted under subsection(1), shall, in token of its having been prepared by him or under his supervision, bear the signature of a surveyor, licensed or duly approved by the Corporation.

(3) Every document submitted under subsection(l) shall be prepared in such manner and shall contain such particulars as may be required by byelaws made in this behalf.

(4) Nothing herein contained shall require a person to comply with the provisions of clause (b) of subsection (1) of this section until such time as the site has been approved by the Commissioner or such person as he may direct :

Provided that an application shall be disposed of within 60 days from the date of receipt.

329. Commissioner to refuse erection or reerection of building. The Commissioner on the advice of the Engineer shall refuse to sanction the erection or reerection of any building which is in contravention of any rule or byelaw made under the provisions of the Act.

330. Ground on which site of proposed building may be disapprovedThe Commissioner on the advice of Engineer may refuse to approve the site on which it is intended to erect or reeiection any building on all or any of the following grounds

(a) that the erection or reerection of the proposed building on such site would be in contravention of a development scheme under section 322 or of any other provision of this Act or of any other enactment for the time being in force; or

(b) that the site is in a portion of the city in which the position, and direction, of the streets have not been determined, and that the building which it is proposed to

erect on such site will, in the opinion of the Commissioner obstruct or interfere with the construction in future of suitable streets in such portion of the city or the drainage, water supply or ventilation thereof :

Provided that any person to whom permission to erect or reerect a building on such a site has been refused may, by a written notice to the Commissioner, require that the position and direction of the future street in the vicinity of his intended building be forthwith laid down and determined, and if such requisition be not complied with within one year from the date thereof may subject to all other provisions of this Act applicable thereto, proceed with the erection of his building; or

(c) that the site has been reclaimed or used as a place for depositing sewage, offensive matter or rubbish or the carcasses of dead animals or is otherwise insanitary or dangerous to health; or

(d) when the site is in a portion of the city for which a development scheme has not been sanctioned by the Corporation and that the building which it is proposed to erect or reerect on such site will, in the opinion of the Commissioner be likely to conflict, in a manner to be communicated in writing to the applicant, with the contemplated development scheme :

Provided that any person to whom permission to erect or reerect a building on such a site has been refused may be written notice to the Commissioner, require that the preparation of a development scheme for the portion of the city in which the said site is situated be provided with as early as circumstances may permit; and if the applicant is not informed in writing within twelve months of the date of the requisition that the Corporation has sanctioned the said scheme, he may, subject to all the other provision of this Act applicable thereto, proceed with the erection or reerection of the building in respect of which the application was made.

331. Ground on which permission to erect or reerect building may be refused (1) The Commissioner shall not grant permission to erect or reerect any building unless and until the Engineer has approved of the site thereof on an application under section 328.

(2) The Commissioner may refuse permission to erect or reerect any building

(a) if the plan and specification submitted with the application show that such building is not in accordance with a development scheme sanctioned under section 324 or with any provision of this Act, or any rule or byelaw made thereunder or any provision of any law for the time being in force; or

(b) if in his opinion the erection or reerection of such building would be a nuisance or injurious to the inhabitants of the neighbourhood or to the public; or

(c) unless and until any plans, specification or particulars called for by him are supplied; or

(d) if the proposed building would be an encroachment upon Government or municipal land; or

(e) if the site of such building does not abut on a street or a projected street or if there is no access to such building from any such street by a passage or pathway appertaining to such site.

332. Power of Commissioner to direct modification of sanctioned plan of building before its completion If at any time before the completion of a building of which the erection has been sanctioned under section 327 the Commissioner finds that any modification of sanctioned plan is necessary, the Commissioner may, subject to payment of compensation as may be assessed by the Commissioner for any loss to which the owner may be put, direct that the building be modified accordingly.

333. Lapse of sanction Every sanction for the erection or reerection of any building shall remain in force for one year only from the date of such sanction, or for such longer period as the Commissioner may have allowed when conveying sanction under section 327. Should the erection or reerection of the building not have been commenced within one year and completed within two years or such longer period as may have been allowed by the Commissioner the sanction shall be deemed to have lapsed but such lapse shall not bar any subsequent application for fresh sanction under the foregoing provisions of the Act.

334. Intimation of completion of building Every person who erects or reerects any building shall within one month of the completion of the work deliver to the Commissioner at his office a notice in writing of such completion and shall give him all necessary facilities for the inspection of such work.

335. Erection and use of temporary building to be approved by Commissioner (1) No building shall be erected for a temporary purpose without the sanction of the Commissioner, or otherwise than in accordance with any byelaws made in this behalf under this Act.

(2) If any building erected for a temporary purpose is not used strictly for such purpose and in accordance with any byelaws made under this Act or is erected without the sanction of the Commissioner, the building may be demolished by the Commissioner at the expense of the owner thereof whether he is prosecuted under this Act or not.

336. Compensation (1) No compensation shall be claimable by an owner for any damage which he may sustain in consequence of the prohibition of unauthorised erection or reerection of any building.

(2) The Corporation shall make reasonable compensation which shall be assessed by the Commissioner, to the owner for any damage or loss which he may sustain in consequence of the prohibition of the authorised erection or reerection of any building or part of a building except in so far as the prohibition is necessary under

any rule or byelaw.

337. Power to require removal or alteration of work not in conformity with byelaws or executed notwithstanding rejection of plan etc (1) If any building is erected or reerected in contravention of any development scheme mentioned under section 322 or any building byelaws made under section 416 (1 D) or without plans having been deposited, or notwithstanding the rejection of plans, or otherwise than in accordance with any requirements subject to which the Commissioner passed the plans, the Commissioner may, without prejudice to his right of taking proceeding in a Court of law for such contravention, by notice to the owner either require him to pull down or remove the work or if he so elects, to effect such alteration therein as may be necessary to make it comply with the said scheme or byelaws or other requirements specified in the notice.

(2) If any case in which the erection or reerection of any building has been commenced or is being carried on unlawfully as mentioned in subsection (1), the Commissioner may, by a written notice, require the building opt ration to be discontinued from the date of service of the notice.

(3) If a person to whom a notice has been given under the foregoing provisions of this section fails to comply with the notice before expiry of (seven) 7 days, the Commissioner may pull down or remove the work in question, or effect such alteration therein as he deems necessary, and may recover from him the expenses reasonably incurred by the Commissioner in so doing, and such dues shall be recoverable as arrears of municipal tax.

(4) Where plans were approved, it shall not be open to the Commissioner to give such a notice on the ground that the building contravenes any scheme or byelaws as the case may be or does not comply with his requirements under this part

338. Power of Commissioner to cancel permission on grounds of material misrepresentations by applicant If at any time after permission to proceed with any building or work has been given, the Commissioner is satisfied that such permission was granted in consequence of any material misrepresentation or fraudulent statement contained in the notice given or information furnished under section 328, or in further information, if any, furnished he may cancel such permission and any work done thereunder shall be deemed to have been done without his permission.

339. Restriction on use of buildings No person shall, without the written permission of the Commissioner, or otherwise than in conformity with the condition, if any, of such permission

(a) use or permit to be used for human habitation any part of a building not originally erected or authorised to be used for that purpose or not used for that purpose before any alteration has been made therein by any work executed in accordance with the provisions of this Act and of the byelaws made thereunder;

(b) change or allow the change of the use of any land or building; and

(c) convert or allow the conversion of one kind of tenement into another kind.

340. Prohibition against use of inflammable material for building, etc. permission No external roof, verandah or wall of a building and no shed or fence shall be constructed or reconstructed of cloth, grass, leaves, mats or other inflammable materials except with the permission of the Commissioner, nor shall any such roof, verandah, wall, shed or fence constructed or reconstructed in any year be retained in a subsequent year except with such permission.

341. Bar of jurisdiction Save as otherwise expressly provided, no civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this part required to be settled, decided or dealt with by the Commissioner.

342. Prohibition regarding buildings unfit for human habitation (1) If after obtaining the opinion of the Engineer, it appears to the Commissioner that any building or part of a building intended or used for human habitation or human occupation for any purpose whatsoever is unfit for such habitation or occupation, he shall give to the occupier and in case the building is not occupied, to the owner notice in writing stating such reasons and signifying his intention to prohibit the further use of such building or part of a building for such purpose, and calling upon the owner or occupier to state in writing his objection, if any, to such prohibition within seven days after the receipt of notice. If no objection is raised by such owner or occupier within the prescribed period, or if the grounds of such objection appear to the Commissioner to be insufficient or not wellfounded, he may prohibit by an order in writing the further use of such building or part of building for human habitation or occupation:

Provided that, before such order is given, the owner or occupier of the building shall be given an opportunity of appearing before the Standing Committee in person or by agent in support of his objection.

(2) Notice of such prohibition shall be served upon the owner of any building or part of a building affected thereby and also upon every occupier or user thereof stating the fact of such prohibition specifying a period not being less than fourteen days after the date of such notice within which every such person shall remove himself and his movable property from the said building or part thereof, and if on the day so appointed any such person has failed to remove himself and his movable property from the said building or part thereof, the Commissioner may cause him and his property to be removed and may recover from him the cost of such removal.

(3) When a building or part of building has been vacated under subsection (2), the Commissioner shall affix a notice thereto in the prescribed manner and no person, except with the permission in writing of the Commissioner and in accordance with the terms and conditions of such permission, shall without sufficient cause enter

into or remain in such building or part of a building.

(4) At any time after a building or part of a building has been vacated under subsection (2), if the Commissioner considers that it can be rendered fit for human habitation by structural alterations and repairs, he may by notice in writing call upon the owner to execute, within a period of six months from the date of receipt of such notice, such structural alterations or repairs, as he deems necessary and if at the expiration of the aforesaid period such alterations or repairs have not been executed to his satisfaction, he shall issue to the said owner a notice in writing ordering the demolition of such building or part there within a period of thirty days from the date of the receipt of such notice or such longer period as the Commissioner may specify.

(5) If the Commissioner is of the opinion that the building is not capable of being rendered fit for human habitation, he may by notice in writing call upon the owner to demolish it within a period of thirty days from the receipt of such notice or such longer period as the Commissioner may specify.

(6) If at the expiration of the said period an order to demolish a building or part of a building issued under subsection (4) or subsection (5) has not been complied with, the Commissioner may direct, by an order in writing the demolition thereof by any municipal employee or contractor. The materials of the building or part of the building so destroyed shall thereupon be sold by public auction and the proceeds of the sale shall be made over to the owner after deducting the cost of such destruction and sale. If the amount realised is not sufficient to cover the cost of such demolition and sale, the balance, if any, shall be recovered from the owner as arrear of municipal tax:

Provided that before such order is given the owner of the building shall be given an opportunity of appearing before the Commissioner in person or by an agent and of showing cause why such order should not be given.

(7) If any building or part of a building in respect of which an order under this section has been made is the subject of a lease such lease shall be voidable at the option of the lease with effect from the date on which the said lessee has to vacate the premises.

343. Removal of buildings in dangerous state (1) If in the opinion of the Commissioner any building wall, structure or anything affixed thereto is in dangerous state, the Commissioner may, by notice in writing require the owner or occupier thereof forthwith either to remove the same or to cause such repairs to be made thereto as he considers necessary for the public safety; and if the danger appears to him to be imminent, he may forthwith take such steps as may be required to avert such danger, including the forcible removal without notice from such building of all the occupiers thereof and their property.

(1) Any expenses incurred by the Commissioner under subsection (1) shall be paid by the owner concerned.

(3) Except with the permission in writing of the Commissioner no person shall without sufficient cause enter into or remain in any building from which the occupier has been removed under subsection (1).

344. Abandoned or unoccupied premises If it appears to the Commissioner that any building or structure is abandoned or unoccupied or has become a resort of disorderly person or it by reason of its conditions seriously detrimental to the interest of the neighbourhood, the Commissioner may give written notice to the owner of such building or structure if he be known and resident within the city, or to any person who is known or believed to claim to be the owner, if such person is resident within the city, and shall also affix a copy of the said notice on some conspicuous part of the said building or structure requiring all persons having any right or interest therein to take such order regarding the said building or structure as may, in the opinion of the Commissioner, be necessary to prevent the same from being resorted to as aforesaid or from being seriously detrimental to the amenities of the neighbourhood.

345. Reclamation of lowlying site (1) If for any reason it appears to the Commissioner that the level of the site on which it is proposed to erect or reerect a building is so low that such building is likely to become insanitary or likely to be a source of nuisance, he shall give to the owner of the building proposed to be erected a notice as to why the said site should not be reclaimed with such materials and raised to such height and within such period not being less than six months from the date of the notice as he shall think fit and the said notice shall specify the cost at which, if so desired by the owner the required work can be performed by municipal agency.

(2) If no objection is raised within such period as aforesaid or if any objection which is raised appears to the Commissioner to be invalid or insufficient, he may by notice in writing direct such owner or occupier

(a) to carry out such reclamation and raising of the height within the period specified; or

(b) within thirty days after the receipt of the said notice to pay to the Commissioner, the estimated cost of performing the work by municipal agency.

(3) In any case in which the estimated cost of the reclamation has not been paid to the Commissioner and the owner fails to carry out the work of reclamation within the period specified in the notice under subsection (2), the Commissioner may recover from him the estimated cost of the work as stated in the notice issued under subsection (1) or so much thereof as he may consider necessary to complete the work, and shall carry out and complete the work

Provided that in case of hardship the Commissioner may realise the amount in instalments after completion of the work.

346. Removal of building materials from any premises may be required If it appears to the Commissioner that any tiles, stones, rafters, building materials or debris of building materials are stored or collected in or upon any premises in such quantity or bulk or in such a way as to constitute a harbourage or breeding place for rats or other vermin or is otherwise a source of danger or nuisance to the occupiers of the said premises or to persons residing in the neighbourhood thereof, the Commissioner may by written notice require the owner of such premises or the owner of the materials or debris so stored or collected therein, to remove or dispose of the same or to take such order regarding the same as may, in the opinion of the Commissioner be necessary or expedient to abate the nuisance or prevent a recurrence thereof.

347. Cleaning of filthy building Should the owner, part owner, or occupier of any building suffer the same to be in a filthy or unwhome some state, the Commissioner may by notice, require him within twentyfour hours to cleans the same or otherwise put in a proper state and thereafter to keep it in a clean and proper state and if it appears to be necessary for sanitary purposes to do so may, at any lime by notice, direct the occupier of any building to white wash or otherwise cleans the said building inside and outside in the manner and within a period to be specified in the notice."

29. Section 7 of the Act of 1971 imposes a duty on the GMC to make adequate provisions by any means or measures for the matters stated in the said section. These powers also includes removal of dangerous building and place and such power is not available to GMDA

30. Chapter VI empowers the Corporation to levy a duty on transfer of immovable property situated within its jurisdiction. Similar powers are available to the GMDA. Section 227 of the Act, inter alia, provides that except with the permission of the Corporation no person shall erect building for any purpose whatsoever, on any part of the area enclosed by the boundary fence of only lake or reservoir from which supply of water is served from a Municipal Water Works. Under section 239 the Commissioner may require any person who without his permission in writing has erected or rebuilt any building over any drain etc. and 10 pull down or otherwise deal with the same as the Commissioner may think fit. Section 244, inter alia, provides that no person shall erect or reerect any building, any part of which is within 100 feet of the Municipal drain or some places set apart for discharge of drainage etc. Section 273, inter alia, provides that no person shall without previous permission from the Commissioner, establish in any premises or materially alter, enlarge or extend any factory, workshop or trade premises. Section 285, inter alia, provides that no person shall let a building or a part thereof in which he knows or has reason to believe that a person has been suffering from a dangerous disease

unless the Medical and Health Officer has disinfected the same and has granted a certificate.

31. Relevant sections from 327 to 347 under the heading regulation and dangerous and insanitary building are wide enough giving power to the Corporation regarding permission for erection or reerection of building. I may refer to clause (a) of section 330, which inter alia, provides that the Commissioner on the advice of the Engineer may refuse to approve the site on which it is intended to erect or reerect any building on all or any of the grounds mentioned in clauses (a) to (d). Specific mention may be made to clause (a) which, inter alia, provides that such a permission may be refused for erection or reerection of building if the proposal is in contravention of the scheme under section 322 of the Act or any other provisions of this Act or any other enactment for the time being in force. At the relevant time, the Assam Town and Country Planning Act, 1959 was in force and it was replaced by the Act of 1985. Therefore, legislature has made adequate provisions in this Act of 1971 so that before granting any permission, the Commissioner of the Corporation would ensure that provisions of the earlier Act or the subsequent Act of 1985 are not violated. Situated thus and in view of the above legal position I hold that granting of permission for construction or reconstruction of any building only by GMDA ignoring the authority of the GMC is contrary to law and if this is allowed the hygienic and other conditions such as keeping of sufficient space from the boundary of the land for construction of any building, drainage etc. would not be able to be enforced by GMDA Therefore, the impugned order is bad in law.

32. Reading both the Act together it is absolutely clear that both the Acts can hold the field together. Before granting any permission for erection or reerection of any building it would be the duty of the Commissioner, GMC first to get the proposal approved by GMDA and in considering the proposal the powers of the GMDA would be limited to the extent as to whether such construction would violate any provision of the Master Plan or Zoning Regulations. If there is no such violation GMDA would be bound to give its approval and thereafter, the GMC shall examine the proposal under the provisions of the Act of 1971 and the byelaws framed thereunder. If the proposal after it is approved by GMDA is in consonance with the provisions of the Act of 1971 and byelaws of the Corporation permission has to be granted. Therefore, reading both the Acts together I hold that there is no inconsistency regarding granting of permission for construction or reconstruction of any building and accordingly I hold as stated above that empowering only GMDA to grant permission for construction or reerection of any building is bad in law.

Situated thus, I find force in the present petition and accordingly it is allowed by setting aside the impugned order. Parties to bear their own costs.