

**(1982) 07 GAU CK 0008**

**Gauhati High Court**

**Case No:** Civil Rule No. 794 of 1982

Municipal Board, Sibsagar

APPELLANT

Vs

Secy.To Govt.of Assam,  
Municipal Admn.Deptt., Dispur  
and Others.

RESPONDENT

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**Date of Decision:** July 1, 1982

**Acts Referred:**

- Assam Municipal Act, 1956 - Section 296, 296

**Citation:** (1983) 2 GLR 63

**Hon'ble Judges:** K.Lahiri, J and T.C.Das, J

**Bench:** Division Bench

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### **Judgement**

Lahiri, J.

Heard Mr. G.K. Talukdar, learned counsel for the petitioner. Perused the impugned orders passed by the learned Deputy Commissioner rendered purportedly in exercise of power under section 296 of the Assam Municipal Act, 1956 "the Act" for short. However, the matter has been detained at that end too long. We would like to impress upon the learned Deputy Commissioner as to the nature, extent or ambit of the power u/s. 296 of "the Act".

1. It will be seen on a bare perusal of the amended section 296 of the Act that this extraordinary power has been granted to meet extraordinary exigencies or emergent situations. Before entertaining an application u/s. 296 of "the Act" it is essential for the authorities to peruse the order or the resolution of the Board bearing in mind that a Board is an elected body, which has been endowed with statutory powers to perform public duties by the legislature. It is an authority. When an order or resolution passed by the Board militates against the fundamental right conferred by Part III or the State policy on the Directive principles laid down in Part IV of the Constitution or it is in excess of power conferred by law on the Board or if the execution of the resolution or order for the doing of an act directed to be done

by Board is likely to lead to a serious breach of the peace or likely to cause serious injury or annoyance to the public or to any class or body of persons, the authorities may intervene u/s. 296. These are conditions precedents to exercise powers u/s. 296. Therefore, before entertaining an application u/s. 296 of "the Act" it is essential for the authority to reach a tentative finding that the complaint made against the decision or order or resolution of the Board suffer from constitutional infirmities and/or are likely to lead to serious breach of the peace or are likely to cause serious injury or annoyance to the public or to any class or body of persons.

3. In the complaints there is no allegation of any breach of peace or likelihood of serious injury or annoyance to the public or to any class or body of persons nor is there any inkling that the settlement order was violative of any of the constitutional provisions, not to speak of Part III and/or Part IV of the Constitution. It is stated that the complaints were against the order of settlement in favour of the highest bidder. Surely, the settling authority is neither, the Govt. nor the officers set forth In Section 296 of "the Act". The statutory authority to make the settlement is undoubtedly "the Board". It appears that in the instant case the applications were filed to the State Govt. but the Govt. instead of disposing the matter itself, transmitted the applications to the learned Deputy Commissioner.

4. The crucial question is how could the learned Deputy Commissioner assume the power to entertain the application without any indication whatsoever in any of the orders that the impugned resolution and/or order was violative of any of the constitutional provisions including Part III and Part IV of the Constitution. Nor is there any indication in the orders of the Deputy Commissioner that any of the contingencies set forth in S. 296 was violated, to enable the Deputy Commissioner to entertain the applications. However, this is our bird's eye view of the entire matter.

5. It appears to us that some simple applications purported to be under section 296, have been detained for an indefinite period without despatch.

6. When an authority exercises power u/s. 296 it should act promptly and must dispose the matter as expeditiously as possible. There is no reason why such simple complainants, which could have been disposed of immediately, have been detained for well over 3 months.

7. We have heard the learned Govt. Advocate Mr. P. Prasad who could not explain any plausible ground for the inordinate delay. Queekly enough, in the meantime, a party who had no lease or settlement of the Bazar has been put in possession of the market. This power of installing a person as a lessee is also not expressly conferred on the authorities under S. 296 of "the Act". It is undoubtedly true that the authority has had power to stay or suspend the operation of the impugned resolution and/or the order of the Board. But the question is whether the authorities mentioned in Section 296 can make any interlocutory order during the pendency of the proceeding u/s. 296. It is conspicuously absent. So, it has been contended that the

order of the Deputy Commissioner whereby Respondent No. 4 has been installed by him is without jurisdiction.

8. The contentions are sound and they require scrutiny. However, if we issue any Rule the matter pending before the learned Deputy Commissioner shall be unnecessarily stalled and there is least possibility of early hearing of the matter. It would cause harm and injury to the Board which is, it is stated at the Bar, sustaining economic loss by virtue of the order of the learned Deputy Commissioner. Therefore, to adjust and balance justice we find no alternative but to see that expeditious justice is dispensed. Accordingly, we direct the learned Deputy Commissioner, Sibsagar to dispose of the applications within 3 (three) weeks from today.

Learned Deputy Commissioner shall just issue notice fixing a date of bearing and shall dispose of the matter on the basis of the records or material before him. If any of the parties makes default to produce records or absent itself, the learned Deputy Commissioner need not wait for their appearance or the records. He should pass necessary orders upon hearing the parties present and on the basis of the papers and documents which will be before him. Against the decision of the learned Deputy Commissioner any of the parties shall be at liberty to approach any appropriate Court for relief. The petitioners are granted liberty to reagitate the questions urged before us in any subsequent proceedings.

9. In the result, the application is dismissed as premature with the above observation.