

(1999) 09 GAU CK 0033

Gauhati High Court

Case No: Criminal No. 1721 of 1994 and Miscellaneous Case No. 502 of 1998

Dr. Narendra Nath Barman

APPELLANT

Vs

The Gauhati Metropolitan
Development Authority and
Others

RESPONDENT

Date of Decision: Sept. 29, 1999

Acts Referred:

- Gauhati Metropolitan Development Authority Act, 1985 - Section 126, 25(4)
- Gauhati Municipal Corporation Act, 1969 - Section 328

Citation: AIR 2000 Guw 91 : (2000) 1 GLT 457

Hon'ble Judges: M. Sharma, J

Bench: Single Bench

Advocate: A. Roy and S.R. Sen, for the Appellant; S.N. Sharma, Standing Counsel G.M.C.
and A.B. Choudhury, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

M. Sharma, J.

The writ petitioner, in this writ petition has assailed the notice dated 28-2-94 (Annexure-13) and 5-5-94 (Annexure-17) issued by the Gauhati Metropolitan Development Authority (in short G.M.D.A.) by which the petitioner has been directed to discontinue the construction of the building in the 6th floor and also to demolish the 4th, 5th and 6th floors which were alleged to be constructed without the permission of the G.M.D.A.

2. The G.M.D.A. and the Chief Executive Officer, G.M.D.A. are made respondent Nos. 1 and 2 respectively and the Gauhati Municipal Corporation (in short G.M.C.) and its Commissioner are impleaded as Respondents 3 and 4 and the State of Assam has been Impleaded as Respondent No. 5 respectively.

3. The dispute in this writ petition is regarding the permission for construction/extension of the existing building of the petitioner for which he filed application before the G.M.C. for further construction of his existing building on the 4th 5th and 6th floors as stated above.

4. During the pendency of the writ petition for G.M.C. Vide letter No. GPL/750/83/21/3190 dated 11-12-97 granted permission for construction of the building on the basis of the application filed by the petitioner for construction/extension of the 4th, 5th and 6th floors on 15-6-92. The petitioner proceeded with the construction after the expiry of the 60 days from the date of the application under Sections 327 and 328 on the ground that the permission sought for was deemed to have been granted by the G.M.C. The respondent No. 1 G.M.D.A. issued the impugned notice dated 28-2-94 and 5-5-94 to the petitioner to stop the construction of the 6th floor of the building and to demolish 4th, 5th and 6th floors of the building. During the pendency of the writ petition respondent G.M.D.A. has filed Misc. Case No. 502/98 for setting aside the No Objection Certificate No. GPL/750/83/21/3190 dated 16-12-97 which has been accepted as affidavit-in-opposition on the prayer of Mr. A. B. Choudhury, learned counsel for the G.M.D.A. Respondent No. 3 has produced the relevant records and Mr. S. Sharma, learned counsel for the G.M.C. however, prayed for filing of the written argument.

5. The petitioner's case is that he applied to the G.M.C. for permission to construct the 4th, 5th and 6th floors of the building after completing the construction of the building up to 3rd floor for which permission was already granted by the G.M.C. by its order dated 7-3-86.

6. It is contended on behalf of the G.M.D.A. that after the enactment of Gauhati Metropolitan Development Authority Act, 1985 and the Constitution of the Authority (GMDA) under the Act, the G.M.D.A. is only empowered to issue building permission and regulate the construction of building in accordance with Master Plan and Zoning Regulation and Building Bye-laws framed by it in consonance with the Master Plan for the Gauhati Metropolitan Authority area and claims that G.M.D.A. is the only Authority for granting or refusing such building permission. Further contention made on behalf of the G.M.D.A. is that the G.M.C. has not framed any development scheme or Bye-laws as required under the provisions of Act, 1971 and that the G.M.C. has been usurping the authority of the G.M.D.A. by granting building permission.

7. Giving chronology of the dates leading to the dispute, the learned counsel for the petitioner Mr. Roy contends that on 3-11-81 the petitioner submitted application before the G.M.C. for construction of the ground floor and first floor of his R. C.C. building and permission was granted on 4-1-82. Again after obtaining permission from the G.M.C. on 7-3-86 the petitioner had completed construction of 2nd and 3rd floors and the assessment was made on those completed floors on 24-4-86 and documents for fixing the tax was also submitted. Again on 15-6-92 the petitioner

submitted further application before the Commissioner, G.M.C. for permission to construct the 4th, 5th and 6th floors of his building along with necessary plan and other relevant documents for the purpose. The petitioner deposited the required building permission and the officials of the G.M.D.A. visited the site and found the construction of the building in compliance with the Building Regulation and Bye-laws etc. But no information was intimated after the expiry of the 60 days under the provisions of Section 383 of 1971 Act. Under law, therefore, it was deemed that the permission had been granted to the petitioner for construction of the 4th, 5th and 6th floors, the petitioner after almost 1 year of his application for permission (15-6-92) started construction of 4th, 5th and 6th floors of the building. The petitioner was served with a notice being No. GMDA/UC/BP/42/94/1 dated 28-2-94 issued by the respondent No. 2 in purported exercise of power u/s 85 of the GMDA stating that the petitioner had constructed RCC 6th floor building without necessary permission from the Authority. On receipt of the said notice, the petitioner on 15-3-94 submitted a representation before the Chairman of the Gauhati Metropolitan Development Authority, Gauhati Vide Annexure-14. Thereafter on 25-3-94 the G.M.D.A. issued notice to the petitioner to submit the building permission etc. and the same was submitted by the petitioner on 1-4-94. But in spite of this the G.M.D.A. issued the notice dated 5-5-94.

7A. Learned counsel for the respective parties have submitted that the disputes regarding the respective power of both the Authorities under the provisions of the G.M.C. Act, 1971 and the G.M.D.A. Act, 1985 requires to be decided by the Court as both the authorities as well as the planning of the building within the Gauhati Municipal Corporation area is hampering. Mr. Roy, learned counsel for the petitioner while praying for final decision in this regard has submitted that in the above premises any interpretation divesting the Gauhati Municipal Corporation and its power to grant building permission under the provisions of Act, 1971 would be destructive of the common object of both the Acts and it will be against the public interest, more so, the G.M.C. is empowered to grant building permission etc. as conferred by the 74th Amendment of the Constitution. Further, it is submitted that to avoid absurdity, harmonious and co-existence of both the Acts and the Authority is desirable as the same would be in consonance with spirit and purpose of the Constitutional amendment. The learned counsel for the parties agreed that necessary guidelines may be laid down by the Court to ensure functioning of both the G.M.A. and G.M.D.A. in co-ordination and union rather than in conflict. Mr. Roy, learned counsel for the petitioner in course of argument has pointed out to the problem that in view of the conflict between the G.M.C. and G.M.D.A. permission granted by one Authority is cancelled or revoked at a later point of time resulting untold miseries and hardship to the public in general and, therefore, on this count also interpretation of the provisions of both the Acts have to be made to co-existence of both the Authorities and a functional harmony between them.

8. Chapter XXVI of the G.M.C. Act, 1971 (Act 1971) is for building regulations. Section 327 of the Act provides that no person shall erect or re-erect any building without any permission of the Corporation. Section 328 of the Act provides the procedure of submitting application for permission to erect/re-erect a building. This section further provides that if an application is made with all necessary documents, the same shall be disposed of by the Corporation within 60 days from the date of receipt if the proposed construction comply with the Development Scheme and conform to the Zoning Regulation.

9. Before the creation of the G.M.D.A. Act, 1985 such power was entrusted with the G.M.C. under Chapter XXVI of the Act, 1971.

10. In this case, petitioner started construction of the Ground floor and first floor of the building in 1982 as per permission of the G.M.C. on 4-1-82. Petitioner completed the 2nd and third floor of the building as per permission granted on 7-3-86 by the G.M.C. and after completion of the same, permission was sought for to start the remaining floors. It is contended that the petitioner waited long period and after expiry of the statutory period of 60 days, petitioner continued the existing construction and admittedly sanction/permission was given on 16-12-97 after a long period. The G.M.D.A., a creation of the State Legislature filed objection for setting aside the No Objection Certificate contending that after the enactment of the G.M.D.A. Act, 1985 and Constitution of the Authority under the said Act, the issuance of permission for construction of building is vested with the G.M.D.A. That, G.M.D.A. required to issue sanction on condition that the building plan for It has to be satisfied, that the building is in compliance with the G.M.D.A. Bye-law framed by it in consonance with the Master Plan for the Gauhati Metropolitan Area and that the G.M.D.A. is the only Authority for granting or refusing such permission for construction of building. The objection in the petition filed by the G.M.D.A. is that the G.M.C. had " not framed any developmental scheme or Bye-laws as required under the 1971 Act and that the G.M.C. has been usurping the Authority of the G.M.D.A. In granting building permission within the Gauhati Metropolitan Area and that, therefore, the G.M.C. has no Authority to issue such No Objection Certificate in favour of the writ petitioner.

11. In the affidavit-in-opposition the stand of the G.M.C. is that the G.M.D.A. is not the Authority for granting or refusing permission regulating construction of building within Gauhati Metropolitan Area. Mr. A. Roy, learned counsel for the petitioner has submitted that on a conjoin reading of the provisions of both the Acts i.e. the Act, 1971 and the Act, 1985, it is clear that both the Authorities have the jurisdiction to function in their respective field in the matter of granting or refusing permission/regulating construction of building in the area common to both the Authorities under the respective Acts.

12. In view of this facts and situation of the matter the issues for consideration are as follows :--

(a) Whether after the Constitution of the G.M.D.A. it is the only Authority, in view of the provisions of the Act 1985 to grant/refuse permission for building construction or regulating construction of building?

(b) Whether the provision of both the Acts are "exclusive" of each other or "permit functioning of both the Authorities" in question in co-ordination in the matter of granting/refusing permission/regulating construction of building in the areas common to both the Acts?

13. Along with these issues, the issue raised in the writ petition for consideration is whether the impugned notices dated 25-2-94 and 5-5-94 are valid?

14. Mr. Roy, learned Sr. counsel for the petitioner has submitted that a cursory reference of the provisions of Delhi Development Act, 1957 and Tamil Nadu Town Planning Act, 1971 together with Rules and Regulations framed thereunder might be helpful in this regard.

15. I agree with the submission of Mr. Roy, learned counsel for the petitioner that the dispute relating to power and jurisdiction of both the Authorities require some decision from the Court to settle with the doubt relating to the power of permission for building construction or regulate construction of building within the respective jurisdiction of these Authorities. In my view, "permission/refusal of permission" to erect/re-erect building and "regulate" building construction are two distinct power conferred on the two Authorities in question. Section 4 of the Act (The Constitution 74th Amendment Act, 1972) conferred amongst other powers on the local Authorities (Municipal Corporation) for regulating land use and construction of building whereas the Act, 1985 confers power to the GMDA to regulate i.e. the power to regulate building Constitution. For this purpose legislations, namely, Assam Town and Country Planning Act, 1959 along with Act, 1971 and the Act, 1985 requires to be discussed for a review of law in this regard.

16. The Act 1959, as Indicated in the preamble, has been enacted for the development of Towns and Country sides of the State of Assam on sound planning principles with object of securing proper sanitary, conditions to conserve and promote the public health, safety and general welfare of the people living therein.

17. The Authority constituted u/s 8(B) of the Act (since repealed) is empowered to prepare a Master Plan and Zoning Regulation for the development of any area within the State and the plan and the Zoning Regulation after approval of the Government would be implemented by the Authority. Section 13 of the repealed Act, 1959 laid down that after the publication of the plan no person would use land in any manner or set up any new structure or change existing structure any building covered by the plan without the permission of the concerned Authority on an application, Section 13(4) provides that the Authority would refuse permission if the applicant contravene the plea and Zoning Regulation.

18. The Act 1959 had been repealed by the Act, 1985. However, some provisions have been saved in this 1985 Act though Section 64 of the Act, 1959 provides that any order under the Act would have effect notwithstanding anything inconsistent therewith contained in any enactment other than the Act, it does not repeal the contemporaneous legislation namely, Assam Municipal Act, 1956. The overriding effect of any order under the Act is only to the extent of any consistency therewith contained in other enactment.

19. As stated above, the relevant section of the Act, 1959 has been repealed u/s 126(1)(2)(3) of the Act, 1985. In the statement of objects it is stated that since the G.M.D.A. excluding the G.M.C. Area, is unable to cope with the situation of the challenging job, the Bill had been brought which received the assent of the President on 20th October, 1987. Section 6 of the Act, 1985 provides for function and power of the Authority constituted u/s 4 of the Act, G.M.C. is also Included in the G.M.D.A. Act as a local Authority u/s. 2(13). Further, Section 11 representing from the G.M.C. is included in the GMDA and Section 21(2) empowers the GMC or other local Authority to enforce Master Plan and Zoning Regulation. Section 23/24 provides for restriction on use of land after publication of the Master Plan except with the permission from the GMDA. Relevant section for the purpose of this case is Section 25(4) which makes it clear that the Authority cannot refuse permission except on the ground of contravention of proposal contained in the Master Plan or Zoning Regulations. It is further provided that unless the permission has been refused within a period of I month from the receipt of the application or such other Information as may be called for by the Authority, it shall be presumed that the permission has been given. Provisions of Section 33 of the Act clearly deals with this aspect of the power of the G.M.D.A. to revoke and modify any permission granted under the Act and lays down that no such order or revocation/modification would be passed so as to effect the operation previously carried out or already been completed. Further, under Sections 87 and 88 of the Act, 1985 the Authority has been empowered to make order to discontinue the development in any area or demolish any building which has been commenced or being carried on or has been completed in contravention of the Master Plan or Development Scheme or without the valid permission of the concerned authority. Section 105 of the Act puts restriction on the power of a local authority to make Rules, Regulations or Bye-laws in respect of the matters relating to erection or re-erection of building Including grant of building permission unless the Authority certificate, that such Rules/Regulations or Bye-laws does not contravene any of the provisions of the Master Plan or Development Scheme. Section 120 is a reproduction of Section 64 of the repealed Act, 1959 and lays down that any order made under the Act, 1985 would have the effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act. Section 121 signifies the overriding effect of the provisions of the Act 1985 and the Rules/Regulations made thereunder inconsistent therewith contained in any other law. It further provides that when permission for

any development in respect of any land has not been obtained under the Act, 1985 such development shall not be deemed to be lawfully undertaken or carried out by reasons only the fact that permission, approval or sanction required under such other law for such development has been obtained. As stated above, Section 126 provides repeals the provisions of the GMC Act, 1959, Act, 1956 and Assam Panchayat Act, 1972 are inconsistent with the provisions of the Act, 1985 w.e.f. the date of Constitution of the GMDA. Further Section 126(3) of the Act lays down that anything done or purported to be done under the provisions of the abovementioned Act shall be deemed to have been done or taken under the provisions of the Act, 1985 and all such Rules or Regulations under the aforementioned Acts if not inconsistent with the provisions of the Act, 1985 would continue to be in force till the Rules and Regulations are made under the 1985 Act.

20. In view of the foregoing discussion the scheme of the Act, 1985 clearly suggests that the Authority has been constituted to ensure implementation of the Master Plan and Zoning Regulation and the Development Scheme and only for this purpose the Authority has been conferred with the power to grant/refuse permission for development of any area in the Metropolitan Area including construction of building.

21. The provisions of the Act indicating the overriding effect thereof over similar provisions of other Acts and repeal of provisions of the Acts set out in Section 126 is to be construed in the light of the underlying objects and purpose of the Act, 1985.

22. Keeping in view this aspect, provisions of Section 126 saves the provisions of any other law which are not inconsistent with the 1985 Act. The corollary from this is that, if there are provisions of any other Acts which are similar to other Act to ensure implementation of the Master Plan and Zoning Regulations and other Development Scheme, those are not in conflict with the provisions of 1985 Act. Therefore, any action or decision of any authority other than the Act which are consistent with the Master Plan and Zoning Regulation or Development Scheme cannot be said to be inconsistent with the provisions of the 1985 Act.

23. In this backdrop of the case, it can be said that the GMDA cannot refuse the permission on the ground of contravention of the proposal contained in the Master Plan or Zoning Regulation as its power is regulatory but the local Authority (G.M.C.) requires to give building permission keeping in view the regulatory power of the GMDA which require to issue certificate accordingly and, therefore, in absence of such certificate the G.M.C. Authority cannot Issue permission for construction of building etc.

24. In the backdrop of these two Acts, the provisions of the Act, 1971, so far it is relevant for the purpose of the decision of this writ petition, require some discussion.

25. Provision of the Act, 1971 has been extended u/s 1(2) to the city of Gauhati. Section 2 of the Act provides that Assam Town and Country Planning Act, 1959 shall apply and be in force within the territorial limit of the Corporation with effect from the date of coming into force of the G.M.C. (Amendment) Act, 1979.

26. Section 2(l) of the Act, 1971 vests the Municipal Administration of the city of Gauhati in the G.M.C. Chapter XXVI contains the relevant provisions with regard to building. Sections 322 to 326 deal with the preparation of development scheme by the G.M.C. and the development scheme include construction and reconstruction of building and this position is clear from the provisions of Section 323(F) of the Act. Section 325 of the Act requires that such development scheme would not be valid unless the same is in conformity with the Master Plan and Zonal Development Plan for the city and is approved by the State Government. Sections 327-341 deal with measures to be undertaken for building control. Section 327 provides that no person can erect or re-erect any building without permission from the Commissioner/Engineer so empowered. Section 328 lays down the procedure for application for such permission. These Sections 327 and 328 in clear term indicate that unless the Commissioner/Engineer, as submitted by Mr. Roy, so empowered intimate to the applicant about the refusal/grant of permission within 60 days from the receipt of application thereof the concerned applicant can proceed with the construction/reconstruction of any building, as if deemed permission had been granted but from the provisions of these sections it transpires that these sections are mandatory which provide that no person shall erect/re-erect building without written permission of the Corporation. Mr. Roy learned Sr. counsel for the petitioner insisted that if any intimation about the refusal of the permission is communicated to the applicant within 60 days from the date of receipt of the application, there is no bar under the provisions of this section to proceed with the construction of the building.

27. The admitted position is that the section is silent about the statutory period of 60 days, therefore, in my view, this provision is vague and illusory leaving the provisions to interpret the section in any manner.

28. Section 330 sets out the grounds on which the site of a proposed building may be disapproved by the G.M.C. This section clearly provides that if erection or re-erection has been done in contravention of the development scheme or of any other provisions of the Act and any other enactment for the time being in force, the G.M.C. shall disapprove such erection, re-erection of the proposed building. In case of refusal u/s 331 due to non-conformity of plan or specification submitted with the application for permission in accordance with the Development Scheme and other provisions such construction/erection would be liable to be stopped and if necessary be demolished under the power conferred u/s 337. Similar power is conferred to the G.M.C. under Sections 342-346.

29. In view of the above discussion, I am of the view that the Section 327 requires to be read with other provisions of Sections 330, 331 and 337 of the Act, 1971. As the provisions of these sections supplement the power of the G.M.C. u/s 337.
30. In view of the provisions of law discussed above, Mr. Roy, learned Sr. Counsel for the petitioner has submitted that the scheme of the Act, 1971 relating to construction of building in particular, clearly indicates that the G.M.C. has been vested with the Authority and power to entertain applications for permission to construct building and execute other construction works within the city of Gauhati. That in considering such application the G.M.C. has to keep in mind the requirement of both the Acts.
31. From the reading of both the sections altogether, it is to be noted that it is obligatory on the part of the G.M.C. to dispose and intimate the refusal/acceptance of the permission on the applications within 60 days from the date of receipt of the application failing which the concerned applicant is not debarred from proceeding with the construction works. The decision of the G.M.C. in examining and granting permission in view of the above provisions of the Act, as submitted by Mr. Roy, cannot be said to be in conflict with the requirement of the Master Plan and the Zoning Regulation or Development Scheme and, therefore, the deemed permission of the petitioner after expiry of the statutory period of 60 days is not illegal.
32. In my view this aspect of the issues require some discussion and consideration 2000Gau./7 VI G--27 Implication of which has a far reaching effect and which confused the jurisdiction of both the Authorities.
33. Mr. S. N. Sharma, learned counsel for the Respondent G.M.C. adopted the argument of Mr. Roy and denied that the G.M.D.A. has not framed any Bye-laws regarding building etc. Both the G.M.D, A. and G.M.C. framed the Bye-laws which were placed before the Govt. for approval and after recasting both the Bye-laws the G.M.C. adopted the Bye-laws framed by the G.M.D.A. with minor variation in Clause 58-4 of Chapter IV of the said Building Bye-laws. This was also approved by the Govt. Vide Order No. GDD/54/97/104 dated 5-12-98. It is further submitted that this Bye-law has been extended to whole of the G.M.C. Area and contains exhaustive provisions with regard to the manner of applying for and grant of permission.
34. Coming to the conclusion of power, function and jurisdiction of the Municipality after the insertion of Part IX-A, after Part IX of the Constitution of India, apparently the distinct and unique power and jurisdiction of the G.M.C. requires consideration. Part IX-A has been inserted by the Constitution (74th Amendment) Act, 1992 which deals exclusively with the local Authorities (Municipalities). After the said enactment Twelfth Schedule has been added to the Constitution by which Municipalities were empowered to make Urban Planning including Town Planning Regulation of land use and construction of building etc. The Govt. of Assam accordingly, amended G.M.C. Act, 1971 by the Amendment Act, 1994 keeping in view the insertion of Article

243 Wadding the 12th Schedule in the Constitution. This 1994 Amendment Act came into force with effect from 5-5-98 vide Section 4 of the Gauhati Municipal (Amendment) Act, 1994.

35. In Section 8 of the Act new provisions were inserted which are as follows :--

"41

42. Urban planning including Town Planning;

43. Regulation of land use and construction of building;

44. Planning for economic and social development;

45. Slum improvement and upgradation;

46. Urban poverty alleviation.

36. As submitted by Mr. Sharma a meeting was held on 6-1-97 represented by the officials of the State Government as well as the officials of the G.M.C. and G.M.D.A. and decision was taken that G.M.C. will continue to issue permission for land use and building construction within the notified area of G.M.C. and the G.M.D.A. will issue permission for land use and building construction for the Metropolitan Areas beyond the areas covered by the notified G.M.C. areas.

37. From the above discussion, the crux of the issue is whether in respect of building permission etc. the power and function of both the G.M.C. and G.M.D.A. is supplementary to each other. To have a decision, a cursory reference to the provisions of Delhi Development Act, 1957 will be helpful in this regard.

38. As preamble suggests, the DD Act, 1957 is for the development, of Delhi according to the plan and for matters ancillary thereto. The Assam Town and Country Planning Act. 1959 and G.M.D.A. Act, 1985 appear on a comparison of the scheme of the three legislations, to be more or less founded on the same frame work. The Act. 1957 has been extended to the whole of the Union Territory of Delhi. The said Union Territory is divided into three administrative zones i.e. the Municipal Corporation of Delhi, New Municipal Committee and the Cantonment. Besides these three Authorities there is Delhi Administration which governs the territory through its legislative body. The function of the Authorities are demarcated and areas of their operation and governance has been specified under the concerned statutes and these local authorities govern their respective territories in co-ordination. The only unique feature is that as far as development of Delhi is concerned, they are governed by the plans made by the Delhi Development Authority.

39. In exercise of powers under the provisions of the said Act, 1957 various Rules and Regulations have been framed. Delhi Development Authority Regulation, 1959 deals mainly with the form of application for permission from D.D.A. The Delhi Development (Master Plan and Zonal Development Plan) Rules, 1959 relates to the

procedure for preparation of Master Plan and Zonal Development Plan; Delhi Development Authority (Removal of Objectionable Development) Rules, 1975 confers the power on the Administrator to remove by demolition or otherwise any development carried on or completed in violation of Master Plan/Zonal Development Plan "in any area beyond development area. Delhi Development Authority (Procedure to stop Development) Rules, 1974 empowers the Administrator to stop any development "in any area" other than a development area, if the local authority fails to do so; Delhi Development Authority (Sealing of Development) Rules, 1986 empowers the DDA and the Competent Authority to seal the unauthorised development and Delhi Building Bye-laws are applicable to building activities under the Jurisdiction of the DDA and also contains exhaustive provisions to be complied with for construction of building. Further D.D.A. has inserted instructions and guidelines for building permit and completion certificate which lays down that no building construction is permitted without a building permit from the D.D.A.

40. From the above scheme of the Act, 1957 it transpires that a Master Plan and a Zonal Development Plan would be prepared by the D.D.A. Further, any development activity in any area beyond development can be undertaken with the permission, of the local authority. Both the D.D.A. and concerned local authority are vested with the power to demolish any building or discontinue any development work within the Development Area (for DDA) and beyond the Development Area of Local Authority. The essence of the provisions of the 1957 Act in Sections 53 and 53A is that "any law, which is inconsistent therewith will have to make way for the provisions of the Act, 1957. Taking into consideration this aspect it is seen that the GMDA has been constituted under the Act 1985 for, the purpose within the Gauhati Development Area on the other hand it is also clear that the provisions of G.M.C. Act, 1971 provides that G.M.C. while granting building permission required to ensure that the Master Plan and Zoning Regulation restrictions are complied with. The G.M.C. Act, 1971 being not inconsistent, so far as it deals with the grant of building permission in accordance with the Master Plan and Zoning Regulation, can coexist with the 1985 Act as the essence of both the Acts comply with the provisions of the Master Plan and Zoning Regulation. Power and function of both the Authorities are reciprocatory for the purpose of granting building permission. Section 126 of the Act, 1985 also stipulates that view. To hold that the G.M.C., in view of the Act 1985 has no power to grant permission would be destructive of the common object of both the Acts and against public interest. However, in spite of this aspect, the G.M.C. is not empowered to give permission of its own, as to give permission is subject to the compliance of the Master Plan and Zoning Regulation which is entrusted to the G.M.D.A. by statutes. Therefore, pre-condition is that the application for permission be approved by the G.M.D.A. to the G.M.C. who shall issue the final permission. However, necessary guidelines be laid down to ensure the functioning of both the authorities in co-ordination and unison rather than in conflict.

From the above, I am of the view that the State Government may lay down the instructions and guidelines for building permission and completion of certificate as has been shown under the Scheme of the Act, 1957 (DDA as stated above).

41. Coming to the provisions u/s 328 of the Act, 1971 and Section 25(4) of the Act, 1985, I hold that the provisions of the sections in both the Acts are vague and for practicable purpose of its application its interpretation must not be left undecided. Section 328 provides that if an application is made with all necessary documents the same shall be disposed of by the G.M.C. within 60 days. Similar provisions u/s 25(4) of the Act, 1985 has been inserted which indicates that authority shall not refuse permission except on the ground of contravention of proposal contained in the Master Plan and Zoning Regulation and further provides that unless the permission has been refused within a period of 60 days from the receipt of the application and such other information it shall be presumed that the permission has been given. In that situation it is the responsibility of the G.M.D.A. to take action within that period to avoid unnecessary disputes which prejudice the right of the applicant.

42. However provisions of Section 328 of the Act, 1971 as discussed above, is vague and not being precise regarding the effect of the situation, after expiry of the 60 days time, authority must not give scope to proceed with the construction etc. For this vague and non-practice provision rampant unplanned buildings have been sprouted up in this area. This situation hits the very purpose of the Master Plan and Zoning Regulation Scheme making the implication of the enactment of 1985 futile. Further the decision of the meeting held on 6-1-97 cannot have any legal implication, which was only done for a stopgap arrangement to meet that disputed situation between the two authorities. Master Plan/Zoning Regulation also included the G.M.C. Area and permission for new constructions is required to be given complying-with the G.M.D.M. Act.

43. In the case in hand, the petitioner filed application before the G.M.C. for permission along with requisite plan etc. on 3-11-81 and permission was granted on 8-1-82 i.e. after the expiry of the 60 days u/s 328 of the G.M.C. Act (Annexure III of the Writ Petition). Petitioner proceeded in phased manner to construct the 3 floors and subsequently for completion of the floors up to 6th floors permission was sought for. Admittedly, as the application was not disposed of within 60 days petitioner proceeded to construct the same. In the backdrop of this situation, it is only the G.M.C. which can decide whether construction can be stopped or be demolished. Apparently, there is no allegation with regard to contravention of Master Plan or Zonal Regulation by the petitioner in constructing the floors of his building and that Municipality has overlooked the Master Plan of the Zonal Regulation while permission was given on 16-12-97. However, as submitted by Mr. A. B. Choudhury, learned counsel for the G.M.D.A. construction of the building up to 6th floor might be dangerous for public safety. And that both the authorities must work in cooperation to tackle such problem for the interest of public.

44. In view of this, some necessary guidelines require to be followed. There is no dispute that the G.M.D.A. a high powered statutory body, has been established with the object of planned development of the Gauhati Metropolitan Area and for enforcement and execution of various schemes for development. The statement of objects and reasons indicate that this high power body was established since the then Development Authority excluding the G.M.C. was unable to cope with the situation. This G.M.D.A. is confined to preparation of Master Plan/Zoning Regulation and if the G.M.D.A. while examining application for permission, require to ensure that the applicant fulfils the requirement and, if not, at that stage itself permission for construction be stopped, of course giving opportunity to the applicant to rectify the defects. When such matter come before the G.M.C. which has the power and authority to examine an application for permission, has to give permission subject to the compliance of the Master Plan and Zoning. Regulation of the G.M.D.A. Establishment of an efficient machinery representing both the authorities would be proper steps to avoid confusion and inconvenience as harmonious co-existence of the Acts and the Authorities is desirable and this would be in consonance with the spirit and purpose of the amendment of the Constitution. Further, to avoid such confusion, provisions of Section 328 of the Act, 1971 should be made specific. The negligence and lack of promptness and efficiency on the part of the G.M.C. cannot give legality to a permission u/s 328, interpreting it to anybody's advantage and G.M.C. cannot be clothed with to any Constitutional safeguard for its inefficient handling of the provisions of Section 328. In such a situation, in a given case, the G.M.D.A. has the authority to act, if the G.M.C. as local authority fails, to give permission in contravention of Master Plan and Zoning Regulation. If it comes to notice of G.M.D.A. that erection/re-erection has been made in contravention of Master Plan/Zoning Regulation, the G.M.D.A. can ask the concerned person to stop construction and bring it to notice of the G.M.C. which shall pass necessary order. To prevent such situation some amendment/addition in the Section 328 is necessary so that expiry of 60 days cannot confer any right, on the applicant to construct/repair/re-erect building. G.M.C. machinery must dispose of the application within 60 days and if it fails to do so, provisions must be inserted accordingly in the section but, in any case, it is made clear, expiry of 60 days cannot be considered as "deeming permission" to proceed with the construction. I am constrained to hold that due to the inaction and lack of promptness of the G.M.C. Authority the confusion has been caused which led to functional disharmony between the two Authorities.

45. In view of the above discussion, it is held that power of scrutinising permission after coming into force of the Master Plan and Zoning Regulation, to carry out development work is with G.M.D.A. and such permission can be refused only on the contravention of the proposal contained in the Master Plan/Zoning Regulation and on no other ground. Further, as stated above, before granting any permission for erection/re-erection of any building, the Commissioner, G.M.C. is bound to get

proposal approved by the G.M.D.A. whose authority is limited to the extent of scrutinising whether construction would regulate the provisions of Master Plan/Zoning Regulation and if building plan satisfy the requirement, G.M.D.A. is bound to give its approval. In the next stage G.M.C. require to examine the proposal under the provisions of the Act, 1971 and accordingly give permission. The application for permission shall be scrutinised, and if found in compliance of the provisions of the Act, 1971 shall issue certificate, without obtaining certificate an applicant shall not proceed with any construction. If such construction is proceeded with without obtaining the certificate, such construction shall be slopped and liable to be demolished. The machinery constituted by the G.M.C. shall make enquiry time to time so that proper implication of the building plan is approved and certified by G.M.C. is made.

46. In the case in hand, permission was granted after a long time and the petitioner has proceeded to construct the floors in question after the expiry of 60 days. However, it is open to the G.M.C. Authority to inspect and check whether the plan and construction of the building is in conformity with the provisions of law and regularise the permission in favour of the petitioner. It is further made clear that the G.M.D.A. In appropriate case, may make enquiry regarding any irregular construction made after expiry of 60 days due to non-issuance of clearance certificate by the G.M.C. and can take necessary action through the G.M.C. to rectify any irregularity found in the plan/construction.

In the result, the impugned notices dated 28-2-94 (Annexure-13) and 5-5-94 (Annexure-17) are set aside. The writ petition is disposed of, with the above directions. No costs.