GAHC010133132026

2026:GAU-AS:9390

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/3459/2026

BIMAL BAISHYA AND 4 ORS
SON OF LATE KHAGEN BAISHYA, RESIDENT OF DHARAPUR,
BAISHYAGAON, P.S. AZARA, DISTRICT- KAMRUP METRO, ASSAM.

2: KRISHNA BAISHYA
ALIAS KRISHNA RAM DAS (BAISHYA)
SON OF LATE LOHIT BAISHYA
RESIDENT OF DHARAPUR
BAISHYAGAON
P.S. AZARA
DISTRICT- KAMRUP METRO
ASSAM.

3: DINESH BAISHYA
SON OF GOPAL BAISHYA
RESIDENT OF DHARAPUR
BAISHYAGAON
P.S. AZARA
DISTRICT KAMRUP METRO
ASSAM.

4: RASIDA BEGUM
WIFE OF JAKIR HUSSAIN
RESIDENT OF MOJOLI
DHARAPUR
P.S. AZARA
DISTRICT- KAMRUP METRO
ASSAM.

5: JAKIR HUSSAIN
SON OF LATE UJJAL SHEIKH
RESIDENT OF MOJOLI
DHARAPUR
P.S. AZARA

DISTRICT- KAMRUP METRO
ASSAM

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY, DEPARTMENT OF HOUSING AND URBAN AFFAIRS, DISPUR, GUWAHATI-781006.

2:THE GUWAHATI METROPOLITAN DEVELOPMENT AUTHORITY (GMDA)
REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER
STATFED BUILDING
BHANGAGARH
GUWAHATI-781005.

3:THE CHIEF EXECUTIVE OFFICER
GUWAHATI METROPOLITAN AUTHORITY
(GMDA) STATFED BUILDING
BHANGAGARH
GUWAHATI-781005.

4:THE COMMISSIONER
GUWAHATI MUNICIPAL CORPORATION
DISPUR
GUWAHATI
ASSAM.

5:THE SECRETARY
32 NO. DHARAPUR GAON PANCHAYAT
DHARAPUR
KAMRUP (METRO)
ASSAM.

6:CHANDRADHAR KALITA
S/ LATE LALIT CHANDRA KALITA
RESIDENT OF VILLAGE-HUDUMPUR
P.S. PALASHBARI
DISTRICT KAMRUP
ASSAM.

7:BARODA KALITA
S/O LATE LALIT CHANDRA KALITA
RESIDENT OF VILLAGE-HUDUMPUR
P.S. PALASHBARI
DISTRICT- KAMRUP
ASSA

Advocate for the Petitioner : MR. A K AZAD, MS S DEVI

Advocate for the Respondent : GA, ASSAM, MR H MAZUMDER(R6,7),MR. ARIF AHMED(R6,7),MR B P BORAH(R6,7),SC, HOUSING AND URBAN AFFAIRS,SC, G M D A,SC, GMC

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

JUDGMENT & ORDER [ORAL]

Date : 26-06-2026

Heard Mr. A.K. Azad, learned counsel for the petitioner; Mr. S. Bora, learned Standing Counsel, Housing and Urban Affairs, GMDA and GMC for the respondent nos. 1 – 4; and Mr. B.P. Bora, learned counsel for the respondent no. 6.

2. In this writ petition preferred under Article 226 of the Constitution of India, the petitioner has primarily assailed an Order dated 18.06.2026 passed by the respondent no. 3 whereby the time/date has been scheduled at 11-00 a.m. on 06.07.2026 to remove/demolish unauthorised construction of a brick boundary wall and house constructed by the petitioners at Dharapur, Guwahati within Guwahati Metropolitan Area [GMA] covered by the Master Plan and Zoning Regulation. The removal/demolition order has been passed on the ground that the construction is in violation of the provisions of the Building Bye-Laws and Section 24 and Section 25 of the Guwahati Metropolitan Development Authority Act, 1985, as amended ['the GMDA Act', for short].

3. On perusal of the materials brought on record, it is noticed that the impugned Order dated 18.06.2026 has been passed in consequence of an Order no. eCF No. 662954/24 dated 19.11.2025 passed by the respondent no. 3 in

exercise of powers conferred under Section 88 of the GMDA Act whereby the said authority has directed demolition of the unauthorised construction stated to have been erected by the petitioners.

4. Mr. Bora, learned Standing Counsel, GMDA has placed a copy of the Order no. eCF No. 662954/24 dated 19.11.2025.

5. From the contents of the Order dated 19.11.2025, it transpires that a Notice was issued earlier on 02.07.2025 to the petitioners asking them to stop unauthorised construction. By the said Notice which was issued under Section 88 of the GMDA Act, the petitioners were asked to show cause within the stipulated time period as to why the irregular/unauthorised construction should not be demolished under Section 88[1] of the GMDA Act. In response, the petitioners had submitted a reply on 11.07.2025 to the show cause notice. The respondent no. 3 observing that the petitioners failed to furnish any planning permit qua the alleged unauthorised construction, fixed the matter for hearing on 06.08.2025 by issuing notices to the petitioners. It was after issuance of show cause notice and after notice for hearing, the Order dated 19.11.2025 came to be passed.

6. The Order dated 18.06.2026, impugned in this writ petition, is issued only in consequence of the original Order dated 19.11.2025. The Order dated 19.11.2025 has not been put to challenge in this writ petition. In the considered view of this court, without there being any challenge to the original Order dated 19.11.2025, a challenge to the impugned Order dated 18.06.2026, being only a consequential order for stopping the process of demolition is not to be

interfered with.

7. At this stage, Mr. Azad, learned counsel for the petitioners has submitted that there is a provision for appeal under the GMDA Act and the petitioners want to avail the said remedy of appeal.

8. On perusal of the provisions of the GMDA Act, 1985, it is found that the petitioners have a statutory remedy of filing an appeal against the original Order dated 19.11.2025.

9. Chapter VIII of the GMDA Act under the heading – 'Appeals and the Appellate Authority', contains Section 71, Section 72 and Section 73. For ready reference, Sections 71, 72 & 73 are quoted hereinbelow :-

> 71. **Appointment of appellate authority** : [1] Save as otherwise provided, the State Government shall appoint an appellate authority to hear all appeals arising out of the provisions of this Act. The decision of appellate authority shall be final.
> [2] The person or persons appointed by the State Government as appellate authority shall have the qualification of a District Judge, or of becoming a member of the Assam Board of Revenue constituted under the Assam Boards of Revenue Act, 1962 [Assam Act XXI of 1962]. The appointment shall be on such terms and conditions as the State Government may decide.
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> 72. **Duties of the appellate authority** : [1] The duties and powers of the appellate authority shall be as follows:
> [a] to hear and decide appeals against the orders of the authority; [b] to decide and hear appeals in respect of such other matters and exercise such other powers as may be entrusted to and conferred upon it by the State Government in accordance with the provisions of this Act.

[2] All appeals to the appellate authority shall be filed within a month from the date of the order appealed against. The time required for taking out copies of the order shall be excluded. The appellate authority may, however, in its discretion condone such delay in filing appeal for sufficient reasons.

73. **Procedure of working of the appellate authority** : [1] The appellate authority shall conduct its proceedings in the prescribed manner after giving the opposite party or anyone interested in the order appealed against an give opportunity of being heard.

[2] The appellate authority may, at any time, call for any extract from any proceeding of the State Government or authority and call for any return or statement or report concerning or connected with any matter with which the authority has been authorised to deal. [3] The appellate authority shall have all the powers of a Civil Court for the purposes of taking evidence on oath or enforcing the attendance of witnesses including the parties interested or any of them and compelling the production of documents and material objection if considered necessary.

[4] The appellate authority in its discretion may make any orders regarding the cost to be paid by any of the parties to the proceeding and the appellate authority shall have full power to determine by whom or out of what property and to what extent such costs are to be paid and the authority shall be bound to execute the orders of the appellate authority in accordance with the directions, if any, contained in the order and such costs or amounts awarded by the appellate authority shall be realised as arrears of land revenue.

10. By a Notification bearing no. GDD.49/94/Pt/44 dated 22.08.1996 issued under Section 71[2] of the GMDA Act, 1985, the State Government with the approval of the Gauhati High Court, had designated the District & Sessions

Judge, Kamrup, Guwahati as an Appellate Authority to decide appeals as the provisions of the GMDA Act.

11. As per sub-section [2] of Section 72 of the GMDA Act, an appeal is to be preferred within a month from the date of the order appealed against. In the case in hand, a period of limitation to prefer an appeal against the original Order dated 19.11.2025 has already expired. The Appellate Authority has also been vested with the jurisdiction to condone any delay in filing an appeal.

12. The petitioners have expressed that they intend to avail the statutory remedy of appeal under the GMDA Act as the Appellate Authority has been vested with all the powers of a civil court for the purposes of taking evidence on oath or enforcing the attendance of witnesses including the parties interested or any of them and compelling the production of documents and material objection, if considered necessary, apart from the power to condone any delay.

13. In view of the above submission made by the learned counsel for the petitioners, the writ petition is not entertained, reserving the liberty to the petitioners to avail the statutory remedy under the provisions of the GMDA Act by filing an appeal before the Appellate Authority within a period of one month from today.

14. It is observed that if the petitioners prefer any application for condonation of the period of delay in preferring an appeal, the Appellate Authority shall consider the same by taking into consideration all the relevant factors. It is clarified that the observations hereinabove are made only for considering the

issue of entertainability of the writ petition, and none of the observations shall be construed as observations on the merits of claims of either the petitioners or the private respondents. Meaning thereby, the Appellate Authority shall decide the appeal, if filed, on its own merits and in accordance with law.

15. A copy of the Order dated 19.11.2025 passed by the respondent no. 3, placed by Mr. Bora is kept with the case record.

JUDGE

Comparing Assistant

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