

GAHC010158062023



2026:GAU-AS:6534

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

**Case No. : WP(C)/4091/2023**

DILIP KUMAR THAKURIA  
S/O LATE NARESH CHANDRA THAKURIA, OWNER OF THAKURIA AUTO  
WHEELS, R/O VILL- KHANAMUKH, P.O.-DHARAPUR, P.S.-AZARA, UNDER  
AZARA GAON PANCHAYAT, GUWAHATI-781017, DIST- KAMRUP (METRO),  
ASSAM

VERSUS

THE GUWAHATI MUNICIPAL DEVELOPMENT AUTHORITY AND 7 ORS  
REPRESENTED BY THE CHIEF EXECUTIVE OFFICER, STATFED BUILDING,  
BHANGAGARH, GUWAHATI-781005

2:THE CHIEF EXECUTIVE OFFICER  
GUWAHATI METROPOLITAN DEVELOPMENT AUTHORITY  
STATFED BUILDING  
BHANGAGARH  
GUWAHATI-781005

3:THE TOWN PLANNER  
GUWAHATI METROPOLITAN DEVELOPMENT AUTHORITY  
BHANGAGARH  
GUWAHATI-781005

4:THE OFFICER INCHARGE JALUKBARI POLICE STATION  
KAMRUP (METRO)  
GUWAHATI

5:SMTI TUTU DAS  
W/O SRI MADAN DAS  
TENANT OF SRI GOBINDA THAPA  
R/O VILL- KHANAMUKH  
UNDER DHARAPUR GAON PANCHAYAT

DHARAPUR  
P.O.-DHARAPUR  
P.S.-AZARA  
DIST- KAMRUP (M)  
ASSAM  
PIN-781017

6:BALENDRA THAKURIA  
S/O LATE BAGSHI THAKURIA  
R/O VILL- KHANAMUKH  
UNDER DHARAPUR GAON PANCHAYAT  
DHARAPUR  
P.O.-DHARAPUR  
P.S.-AZARA  
DIST- KAMRUP (M)  
ASSAM  
PIN-781017

7:JATINDRA NATH DAS  
S/O LATE KANTI DAS  
R/O VILL- KHANAMUKH  
UNDER DHARAPUR GAON PANCHAYAT  
DHARAPUR  
P.O.-DHARAPUR  
P.S.-AZARA  
DIST- KAMRUP (M)  
ASSAM  
PIN-781017

8:GOBINDA THAPA  
S/O LILA DEVI  
R/O VILL- KHANAMUKH  
UNDER DHARAPUR GAON PANCHAYAT  
DHARAPUR  
P.O.-DHARAPUR  
P.S.-AZARA  
DIST- KAMRUP (M)  
ASSAM  
PIN-78101

**Advocate for the Petitioner** : MR. R SARMA, MS. S D SAIKIA, MRS. G M D BAISHYA

**Advocate for the Respondent** : SC, G M D A, MR. K KALITA(R-5), MR. C. SHIL (R-5), P  
BURAGOHAIN(R-5), MR S C DAS(R-5), GA, ASSAM

**:::BEFORE:::**

**HON'BLE MR. JUSTICE KARDAK ETE**

Date on which judgment is reserved : 07.05.2026  
Date of pronouncement of judgment : 12.05.2026  
Whether the pronouncement is of  
the operative of the judgment? : No  
Whether the full judgment has been  
pronounced? : Yes

**JUDGMENT & ORDER (CAV)**

Heard Mr. R. Sarma, learned counsel for the petitioner. Also heard Mr. P. Nayak, learned Additional Advocate General and Mr. H. K. Hazarika, learned Government Advocate, for the State respondents and Ms. D. R. Bonghsary, learned counsel appearing on behalf of Mr. S. C. Das, learned counsel for the respondent No. 5.

**2.** By filing this writ petition, the petitioner has put to challenge the order dated 11.07.2023, passed by the Chief Executive Officer, Guwahati Metropolitan Development Authority, Guwahati, whereby the petitioner has been directed to demolish the unauthorized construction of building in violation of Guwahati Metropolitan Development Authority Act, 1985 (for short, "the GMDA Act, 1985"), Zoning Regulations and Building Byelaws made therein within 10 (ten) days of the receipt of the order, failing which the authority would proceed with the demolition of the unauthorized portion of the building without any further

intimation and recover the expenses incurred thereof from the petitioner.

**3.** The case of the petitioner, in brief, is that he had purchased land and property standing thereon in his name and in the name of his wife by way of registered sale deeds executed in the years 2016 and 2023 from one Smti. Satyebati Kakati. The said land is situated at Dharapur Revenue Village under Ramcharani Mouza, within the jurisdiction of 32 No. Dharapur Gaon Panchayat at Khanamukh, measuring 2 Kathas covered by Dag No. 857 and Patta No. 524. One RCC building of G+4 floors has been constructed on the said land. Subsequently, mutation was granted in favour of the petitioner and his wife after following due procedure of law and corresponding entries were also reflected in the Integrated Land Records Management System (Dharitree).

**4.** It is the case of the petitioner that in the year 2006, the original owner, namely, Smti Satyebati Kakati, had applied before the 32 No. Dharapur Gaon Panchayat seeking permission for construction of RCC building (G+4) along with boundary wall over the said land. Pursuant thereto, a No Objection Certificate dated 30.11.2006 was issued by the President of the said Gaon Panchayat for a period of 1 (one) year. Thereafter, construction of the RCC building was undertaken with the knowledge and supervision of the concerned Gaon Panchayat authorities. The technical and engineering staff of the Panchayat had also inspected the construction and found no deviation from the approved plan.

**5.** While the petitioner was carrying on business in the said premises under the name and style of M/S Thakuria Auto Wheels, the Guwahati Municipal Development Authority ('GMDA', for short) issued a communication dated

16.08.2021 addressed to the M/S Thakuria Auto Wheels, directing to submit the No Objection Certificate and approved building plan, failing which action will be taken under the provisions of the GMDA Act, 1985. The said communication was issued on the basis of complaints lodged by Shri Balendar Chandra Thakuria and Shri Jatindra Nath Das, respondent Nos. 6 & 7 herein, alleging, *inter alia*, blockage of drain and deviation in setback areas in the construction of the said building. On receipt of the aforesaid communication, the petitioner submitted the relevant documents before the GMDA including the No Objection Certificate issued by the 32 No. Dharapur Gaon Panchayat in favour of the original owner, site/service plan of the RCC building (G+4), land documents, trace map and revenue payment receipts. In spite of submission of required documents, the Chief Executive Officer, GMDA, illegally issued the show cause notice dated 19.05.2023 purportedly under Sections 87 and 88 of the GMDA Act, 1985 directing the petitioner to stop the alleged unauthorized construction forthwith and to show cause within 10 (ten) days as to why the irregular/unauthorized construction should not be demolished or seal the premises.

**6.** In response thereto, the petitioner submitted his reply dated 01.06.2023 contending, *inter alia*, that the land and property in question do not fall within the jurisdiction of either the GMDA or the Guwahati Municipal Corporation, as the same are situated within the jurisdiction of the 32 No. Dharapur Gaon Panchayat. It was accordingly contended that the GMDA had acted without jurisdiction as the petitioner was governed by the provisions of the Assam Panchayat Act, 1994 and not by the GMDA Act, 1985.

**7.** The Chief Executive Officer, GMDA, by the impugned order dated

11.07.2023, rejected the cause shown by the petitioner on the ground that the construction has been carried out without obtaining necessary permission/NOC from the GMDA authorities alleging violation of the provisions of the GMDA Act, 1985 and the Building Bye-laws framed thereunder. Consequently, the petitioner has been directed to demolish the unauthorized construction alleged to have been raised in violation of the GMDA Act, Zoning Regulations and Building Bye-laws vide impugned order dated 11.07.2023.

**8.** Mr. R. Sarma, learned counsel for the petitioner, submits that the petitioner has not violated any provision of the Guwahati Building Construction (Regulation) Act, 2010, the Bye-laws framed thereunder, or the GMDA Act, 1985. He submits that even assuming that the territorial jurisdiction of the GMDA was subsequently extended to the area under 32 No. Dharapur Gaon Panchayat, the original owner, namely, Smti. Satyabati Kakati, had already obtained the requisite No Objection Certificate on 30.11.2006 and the entire RCC building along with the boundary wall have been completed during the period 2006–2007. As such, there was no ongoing construction over the land in question.

**9.** Mr. R. Sarma, learned counsel, while referring to the provision of GMDA Act, particularly Section 88 of GMDA Act, 1985, submits that no demolition order could have been passed without affording the petitioner a reasonable opportunity of hearing, including a personal hearing. Although the petitioner had submitted a detailed reply along with relevant documents, the same has not been properly considered by the respondent authority before passing the impugned order. He submits that since the land and property does not fall within the jurisdiction of GMDA, no action could have been initiated against the

petitioner as the land and property in question fall within the jurisdiction of 32 Dharapur Gaon Panchayat beyond the jurisdiction of the GMDA. Therefore, Mr. R. Sarma prays for setting aside and quashing of the impugned order dated 11.07.2023 as well as the show cause notice dated 19.05.2023 issued by the respondent authorities, on the ground that the same have been passed without jurisdiction, in violation of the principles of natural justice and contrary to the provisions of law governing the field.

**10.** In support of his submission, Mr. Sarma, learned counsel has relied on the following two judgments:

(i). **Municipal Corporation, Ludhiana vs. Inderjit Singh and Anr.**, reported in **(2008) 13 SCC 506**.

(ii). **Krishnadatt Awasthy vs. State of Madhya Pradesh & Ors.**, reported in **(2025) 7 SCC 545**.

**11.** On the other hand, Mr. P. Nayak, learned Additional Advocate General for the State respondents, submits that the land and property in question fall within the jurisdiction of the Guwahati Metropolitan Development Authority (GMDA). In support of such contention, he has referred to the notification dated 25.09.1986 issued under the Assam Town and Country Planning Act, 1959 and the notification dated 09.06.2009 issued under Section 21 of the GMDA Act, 1985, whereby Dharapur area under Jalukbari Mouza was brought within the purview of the Master Plan and Zoning Regulations of the Guwahati Metropolitan Area.

**12.** The learned Additional Advocate General submits that acting upon complaints received from local residents alleging unauthorized construction,

deviation from the approved plan and discharge of wastewater affecting adjoining properties, the GMDA authorities issued a letter dated 16.08.2021 directing the petitioner to produce the building permission, approved drawings, NOC and other relevant documents relating to the RCC building in question. Upon scrutiny of the documents furnished by the petitioner, it was found that the building permission/NOC dated 30.11.2006 had been issued by the 32 No. Dharapur Gaon Panchayat for construction of an RCC G+4 building for residential as well as commercial purposes. However, upon subsequent site inspection conducted pursuant to fresh complaints received in the year 2023, several deviations and unauthorized constructions were detected, including extension of the ground floor up to the boundary wall, construction covered with C.I. sheet roofing on the eastern and western sides and construction of a toilet in the rear setback area, which were not part of the approved plan.

**13.** Mr. Nayak, learned Additional Advocate General, submits that in view of such deviations, a notice under Sections 87 and 88 of the GMDA Act, 1985 was issued on 19.05.2023 directing the petitioner to stop further unauthorized construction and to show cause. The petitioner thereafter submitted his reply along with relevant documents, which were duly considered by the authority. However, upon scrutiny, the respondent authorities found inconsistencies between the existing construction and the approved drawings and accordingly passed the demolition order dated 11.07.2023 under Section 88 of the GMDA Act, 1985.

**14.** The learned Additional Advocate General further submits that the area in question is covered by the Master Plan and Zoning Regulations for Guwahati Metropolitan Area, 2025, which came into force w.e.f. 07.07.2009, and even

prior thereto the area was already covered under the 1986 Master Plan and Zoning Regulations. Therefore, the petitioner's contention that the property falls outside the jurisdiction of the GMDA is wholly misconceived.

**15.** Referring to the subsequent affidavit filed on behalf of the GMDA authorities, Mr. Nayak submits that pursuant to the order dated 24.07.2023 passed by this Court, a fresh site inspection was carried out in presence of the petitioner, wherein gross violation of setback norms were detected. The inspection revealed deviation in the rear, left side and right side setbacks of the building. It is submitted that the impugned order pertains only to the unauthorized and newly added constructions raised in violation of the Building Bye-laws and the Master Plan and not to the entire RCC building standing on the land. The respondent authorities have acted strictly in accordance with the provisions of the GMDA Act, 1985, the Building Bye-laws and the Master Plan and Zoning Regulations and therefore, the impugned action does not warrant any interference.

**16.** Ms. D. R. Bonghsiary, learned counsel appearing on behalf of Mr. S. C. Das, learned counsel for the respondent No. 5, submits that although the petitioner claims to have obtained building permission, NOC and approved drawings from the 32 No. Dharapur Gaon Panchayat, the actual construction has been carried out in complete deviation from the approved plan and in violation of the applicable GMDA rules and Building Bye-laws. It is submitted that while the permission was allegedly granted for construction of a G+4 RCC building, the petitioner has constructed the building up to G+5 floors in violation of the prescribed norms.

**17.** She submits that the respondent No. 5, being an adjacent land owner and occupant, along with her husband, had lodged complaints before the GMDA authorities regarding the illegal construction raised by the petitioner as the unauthorized construction posed serious threat to life and property and on one occasion, a portion of a heavy wall from the 4th floor allegedly fell upon the shop premises of the respondent No. 5 causing substantial damage. Acting upon such complaints, the GMDA authorities conducted inspection and thereafter issued the show cause notice dated 19.05.2023 pointing out, *inter alia*, that the ground floor construction had merged with the plot boundary and that there was deviation in the rear setback area due to construction of a toilet. Since the petitioner failed to furnish any satisfactory explanation in response thereto, the demolition order dated 11.07.2023 came to be issued by the GMDA authorities.

**18.** Ms. Bonghsiary, learned counsel, further submits that the area in question falls within the jurisdiction of the GMDA and therefore, the authorities were fully competent to initiate proceedings under Sections 87 and 88 of the GMDA Act, 1985. The learned counsel also questions the validity of the building permission allegedly issued by the Gaon Panchayat by contending that the Gaon Panchayat has limited authority in the matter of granting building permission and that for construction beyond G+2 floors, approval from the concerned Zilla Parishad was required, which, according to the respondent No. 5, was never obtained in the present case. She further submitted that the petitioner never obtained any permission from the GMDA authorities despite the area being covered under the GMDA Master Plan and Zoning Regulations. Therefore, the impugned demolition notice and consequential action initiated by the GMDA authorities are legal and valid and as such, the present writ petition, being devoid of merit, is liable to be dismissed.

**19.** In rejoining, Mr. R. Sarma, learned counsel for the petitioner, submits that the respondent authorities have failed to furnish or place on record the complaint petitions dated 27.07.2021 and 15.03.2023, on the basis of which the impugned proceedings were initiated, thereby depriving the petitioner of an effective opportunity to respond to the allegations made therein. The learned counsel reiterates that the RCC G+4 building was constructed by the original owner, Smti. Satyabati Kakati, pursuant to the NOC/building permission dated 30.11.2006 issued by the 32 No. Dharapur Gaon Panchayat and that the construction was completed during 2006 itself. The petitioner subsequently purchased the property by registered sale deeds executed during the years 2016 and 2023 and no further construction or renovation has been carried out thereafter.

**20.** Mr. Sarma submits that the property falls within the jurisdiction of the 32 No. Dharapur Gaon Panchayat and the respondent authorities have failed to place any specific notification on record showing inclusion of the petitioner's land within the jurisdiction of the GMDA, despite observations made by this Court in its order dated 24.07.2023. It is further submitted that the Gaon Panchayat was competent to issue the building permission/NOC in respect of the property in question.

**21.** Due consideration has been extended to the submissions advanced by the learned counsel for the parties and also perused the materials available on record.

**22.** The petitioner is the owner of the land measuring 2 Kathas covered by Dag No. 857 and Patta No. 524 along with a G+4 RCC building standing on the said property, situated at Dharapur Revenue Village under Ramcharani Mouza,

which have been purchased from one Smti Satyebati Kakati through a registered sale deed in the year 2016 & 2023. On the complaint lodged by respondent Nos. 6 & 7 alleging blockage of drain, deviation in setbacks and unauthorized construction undertaken by the petitioner, the respondent GMDA issued a letter addressed to the M/S Thakuria Auto Wheels directing to submit NOC and approved building plan. Accordingly, the petitioner submitted the relevant documents before the authority. Thereafter, the respondent GMDA issued notice under Sections 87 & 88 of the GMDA Act, 1985 directing the petitioner to stop the alleged unauthorised construction and to show cause within 10 (ten) days as to why the unauthorized construction should not be demolished or seal the premises.

**23.** The petitioner submitted his reply on 01.06.2023, *inter alia*, questioning the authority and jurisdiction of the respondent authorities on the ground that the land and property in question fall within the jurisdiction of the 32 No. Dharapur Gaon Panchayat and not under the jurisdiction of either the GMDA or the GMC. The respondent authorities rejected the cause shown by the petitioner vide impugned order dated 11.07.2023.

**24.** It is not in dispute that the original owner, namely, Smti. Satyebati Kakati, had obtained permission/NOC for construction of the RCC G+4 building along with boundary wall over the said land, pursuant to which G+4 RCC building has already been constructed.

**25.** Upon perusal of the documents on record, it reveals that the authorities had conducted site verification as regards the alleged unauthorized construction by the petitioner in the presence of the petitioner and found unauthorized constructions and deviations in setback areas without permission of the

competent authority as per the relevant statutory provisions. The findings recorded in the verification report have not been put to challenge by the petitioner except to contend that the construction undertaken is in accordance with the building permission granted by the 32 No. Dharapur Gaon Panchayat.

**26.** The prime thrust of submission of the petitioner is as regard the jurisdiction of the GMDA, contending that the land and property of the petitioner falls within the 32 No. Dharapur Gaon Panchayat and does not fall within the jurisdiction of either GMDA or GMC and therefore, no action could have been initiated against the petitioner under the GMDA Act, 1985. To appreciate the said contention, it would be apposite to refer to the relevant provisions of the GMDA Act, 1985.

**27.** The GMDA Act, 1985 has been enacted to provide for the establishment of an authority for the planned development of the Guwahati Metropolitan Area. The preamble read as under:

*“Whereas it is expedient to provide for the establishment of an authority for the enforcement and execution of the Master Plan and for the formulation and execution of schemes for the planned development of Guwahati Metropolitan Area; for the co-ordination and supervision of the execution of such plans and schemes with the object of securing proper living and sanitary conditions; to conserve and promote the public health, safety and general welfare of the people living therein; and for matters connected therewith or incidental thereto.”*

**28.** Section 1(2) of the Act provides that the Act shall extend to the whole of Guwahati Metropolitan Area excluding any area to which the provisions of the Cantonments Act, 1924 apply.

**29.** Section 87 & 88 of the Act empowers the authority the power to stop development and demolition of building as well as procedures in cases of unauthorised construction, which are reproduced herein under:

*"87. Power to stop development.-(1) Where any development in any area has been commenced in contravention of the Master Plan or development scheme or without the permission, approval or sanction referred to in Section 25 and Section 30 or in contravention of any conditions subject to which such permission, approval or sanction has been granted, the authority may, in addition to any prosecution that may be instituted under this Act, make an order requiring the development to be discontinued on and from the date of the service of the order and such order shall be complied with accordingly.*

*(2) Where such development is not discontinued in compliance with the order under sub-section (1) the authority may require any Police Officer not below the rank of sub-inspector of Police to remove the person by whom the development has been commenced including all his assistants and workmen from the place of development within such time as may be prescribed in the requisition and such Police Officer shall comply with the requisition accordingly.*

*(3) After the requisition under sub-section (2) has been complied with, the authority may depute, by a written order, a Police Officer or an officer or an employee of the authority to keep a watch on the place to ensure that the development is not continued.*

*(4) The provision of this section shall be in addition to and not in derogation of, any other provision relating to stoppage of building operations contained in any other law for the time being in force.*

*88. Power of demolition of building.-(1) Where any development has been commenced or is being carried on or has been completed in contravention of the Master Plan or development scheme or without the permission, approval or sanction referred to in Section 25 and Section 30 of the Act or in contravention of any conditions subject to which such permission, approval or sanction has been granted, the authority may in addition to any prosecution that may be instituted under the Act, make an order directing that such development shall be removed by demolition, filling or otherwise by the owner, occupier, manager or by any person at whose instance the development has been commenced or is being carried out or has been completed within such period not being less*

*than five days and more than thirty days from the date on which a copy of the order of removal with brief statement of the reasons thereof has been delivered to the owner, occupier and manager or the person at whose instance the development has been commenced or is being carried out or has been completed as may be specified in the order and on his failure to comply with the order, the authority may remove or cause to be removed the development and the expenses of such removal shall be recovered from the owner, occupier, manager or any person at whose instance the development was commenced or was being carried out or was completed as arrears of land revenue; provided that no such order shall be made unless the owner, occupier, manager or the person concerned has been given a reasonable opportunity to show cause why the order shall not be made.*

*(2) The provisions of this section shall be in addition to and not in derogation of any other provision relating to demolition of buildings contained in any other law for the time being in force.*

*(3) No compensation shall be claimed by any person for any damage which he may sustain in consequence of the removal of any development under this section or the discontinuance of the development under Section 87 of this Act."*

**30.** A bare reading of the aforesaid provisions clearly indicates that the GMDA Act, 1985 has been enacted to provide for establishment of an authority for plan development of the Guwahati Metropolitan Area. It is to provide for establishment of an authority for enforcement and execution of master plan and formation and execution of schemes for plan development of Guwahati Metropolitan Area and the matters connected therewith or incidental thereto. The Act would extent to the whole of GMC Area excluding any area to which the provisions of the Cantonments Act, 1924 applies.

**31.** Sections 87 empowers the authority to direct stoppage of any development commenced in contravention of the Master Plan, development scheme or without requisite permission or sanction. Section 88 empowers the

authority to order demolition or removal of such unauthorized development, subject to compliance with the proviso requiring reasonable opportunity to show cause before such order is passed.

**32.** In the present case, the respondents have relied upon the notification dated 25.09.1986 issued under the Assam Town and Country Planning Act, 1959 and the notification dated 09.06.2009 issued under Section 21 of the GMDA Act, 1985 whereby Dharapur area under Jalukbari Mouza was brought within the purview of the Master Plan and Zoning Regulations of the Guwahati Metropolitan Area. It is not disputed that Dharapur village under Ramcharani Mouza appears in the notification dated 25.09.1986. Although in the notification dated 09.06.2009 the village name appears to have been mentioned as "Dharampur", there appears to be no other village by such name under Jalukbari Mouza. As such, this Court finds substance in the contention of the respondent authorities that Dharapur village falls within the jurisdiction of the GMDA and is governed by the provisions of the GMDA Act, 1985.

**33.** Coming to the contention of the learned counsel for the petitioner as regards the violation of principle of natural justice, particularly absence of personal hearing before passing the impugned order dated 11.07.2023, it is seen that the proviso to Section 88 of the GMDA Act, 1985 only mandates that the owner, occupier or person concerned must be given a reasonable opportunity to show cause before an order of demolition is passed. In the present case, admittedly, the petitioner was issued notice under Sections 87 & 88 of the GMDA Act, 1985, to which the petitioner submitted reply stating that the GMDA has no authority or jurisdiction to initiate any proceedings as the land and property of the petitioner falls within the jurisdiction of Dharapur Gaon Panchayat which would be regulated by Assam Panchayat Act, 1994 and not by

the GMDA Act, 1985. As considered in the preceding paragraphs that as per the GMDA Act, 1985 the land and property of the petitioner falls under the jurisdiction of Guwahati Metropolitan Area, the issue of jurisdiction as raised by the petitioner is considered for rejection.

**34.** Having regard to the authorities relied on by the learned counsel for the petitioner, it is seen that in the case of **Inderjit Singh** (supra), the respondent Inderjit Singh has preferred an appeal against the order of the Commissioner directing demolition of the construction to which the appellate court was entitled to consider as to why the mandatory legal provisions have been complied with or not as the Act provides for an opportunity of hearing before an order of demolition is passed and the Hon'ble Supreme Court has found that the said provision for providing an opportunity of hearing has not been complied with. In that context, the Hon'ble Supreme Court has observed as under:-

*"16. Respondent No.1 preferred an appeal against the order of the Commissioner directing demolition of the construction. The Appellate Court was entitled to consider as to whether the mandatory legal provisions had been complied with or not. The proviso appended to Section 269 of the Act in no uncertain terms provides for an opportunity of hearing before an order of demolition is passed. It is imperative in character but the said provision had not been complied with. The action on the part of the appellant, therefore, was highly arbitrary.*

*17. In Aligarh Muslim University (supra) itself, the Court noticed the decision of the Court in S.L. Kapoor v. Jagmohan & Ors. [(1980) 4 SCC 379] wherein it was held that non-compliance of the principles of natural justice by itself causes prejudice. No doubt, the development of law in the field would have also to be kept in mind. The said decision, however, was rendered in the facts of the said case as it was a case of overstay of leave by an employee. It was found that no prejudice had been caused to the petitioner therein. Mr. Patwalia places strong reliance upon paragraph 21 of the said decision which reads as under :*

*"21. As pointed recently in M.C. Mehta v. Union of India there can be certain situations in which an order passed in violation of natural justice need not be set aside under Article 226 of the Constitution of India. For example where no prejudice is caused to the person concerned, interference under Article 226 is not necessary. Similarly, if the quashing of the order which is in breach of natural justice is likely to result in revival of another order which is in itself illegal as in Gadde Venkateswara Rao v. Govt. of A.P. it is not necessary to quash the order merely because of violation of principles of natural justice."*

*It is, therefore, not a case where one statutory order has been set aside by a higher authority. The said principle, therefore, had no application to the fact of the instant case."*

**35.** In **Krishnadatt Awasthy** (supra), the Hon'ble Supreme Court has reiterated and summarised the principle of natural justice for which there would not be any disagreement to the said proposition, which is reproduced hereinunder:-

*"40. In Swadeshi Cotton Mills v. Union of India, this Court held:*

*"44. ...this rule of fair play must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands". The Court must make every effort to salvage this cardinal rule to the maximum extent possible, with situational modifications."*

*48. In a more recent decision in State of UP v Sudhir Kumar Singh, the position of law was summarised as under:*

*"42....42.1. Natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. The breach of the audi alteram partem rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused.*

*42.2. Where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per se does not lead to invalidity of the orders passed. Here again, prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in public interest.*

*42.3. No prejudice is caused to the person complaining of the breach of natural justice where such person does not dispute the case against him or it. This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, in cases in which the Court finds on facts that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice.*

*42.4. In cases where facts can be stated to be admitted or indisputable, and only one conclusion is possible, the Court does not pass futile orders of setting aside or remand when there is, in fact, no prejudice caused. This conclusion must be drawn by the Court on an appraisal of the facts of a case, and not by the authority who denies natural justice to a person.*

*42.5. The "prejudice" exception must be more than a mere apprehension or even a reasonable suspicion of a litigant. It should exist as a matter of fact, or be based upon a definite inference of likelihood of prejudice flowing from the non-observance of natural justice."*

**36.** Reverting back to the present case, indisputably, initially the petitioner was issued a letter to submit documents and thereafter issued show cause notice before passing of the impugned order. The petitioner has availed such opportunity by filing a detailed reply. The principal objection raised by the petitioner pertains to the jurisdiction of the GMDA and denial of unauthorized construction. As already discussed hereinabove, the land and property in question fall within the Guwahati Metropolitan Area and are governed by the provisions of the GMDA Act, 1985. Further, the materials placed on record indicate that deviations and unauthorized constructions were detected during inspection conducted by the competent authority in the presence of the petitioner.

**37.** The facts of inspection and verification of the site in the presence of petitioner, and detection of deviations and unauthorized construction are indisputable and no prejudice is shown to have been caused to the petitioner.

The petitioner has failed to substantiate that the construction existing at site strictly conforms to the approved plan. Thus, having found on the basis of materials and as per the GMDA Act, 1985 that the petitioner has undertaken the construction activity which is unauthorized and the land and property would fall under the jurisdiction of GMDA and would be regulated by the GMDA Act, 1985, this court is not inclined to interfere with the impugned order dated 11.07.2023.

**38.** In view of what has been discussed hereinabove, I am of the considered view that the respondent GMDA authorities has jurisdiction to initiate proceedings under Sections 87 and 88 of the GMDA Act, 1985 and thus, the impugned action cannot be said to be without authority of law. No procedural illegality warranting interference has been made out.

**39.** Accordingly, this writ petition stands dismissed being devoid of merit. No order as to cost(s).

**JUDGE**

**Comparing Assistant**