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

Case No. : WP(C)/5972/2026

SMTI PRABHA DEVI KOTHARI
WIFE OF SRI RAJENDRA KUMAR KOTHARI, C/O. M/S. SOHANLAL
SUMERMAL, M.S. ROAD, FANCY BAZAR, GUWAHATI-781001. PH.
919435305881.

2: SRI RAJENDRA KUMAR KOTHARI
SON OF LATE SUMERMAL KOTHARI
C/O. M/S. SOHANLAL SUMERMAL
M.S. ROAD
FANCY BAZAR
GUWAHATI
781001. PH. 91 9365098137.

3: M/S. SOHANLAL SUMERMAL
REPRESENTED BY ITS PARTNER
SMTI. PRABHA DEVI KOTHARI
WIFE OF SRI RAJENDRA KUMAR KOTHARI
M.S. ROAD
FANCY BAZAR
GUWAHATI-781001

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM,
GUWAHATI DEVELOPMENT DEPARTMENT, ASSAM SECRETARIAT,
DISPUR, GUWAI781006, DIST. KAMRUP M, ASSAM.

2: THE GUWAHATI MUNICIPAL CORPORATION
REPRESENTED BY ITS COMMISSIONER
OFFICE OF THE COMMISSIONER
GUWAHATI MUNICIPAL CORPORATION
GANESH MANDIR
GUWAHATI 781006

DIST. KAMRUP (M)
ASSAM.

3:SRI SUNIL BAJORIA
SON OF LATE BHAGWATI PRASAD BAJORIA
RESIDENT OF MANI BHAWAN
LOWER POLICE BAZAR
SHILLONG 793001
MEGHALAYA

Advocate for the Petitioner : MR. D DAS SR. ADV, MR. P KHATANIAR, MS N RAHMAN, N R SURANA

Advocate for the Respondent : SC, GDD, SC, GMC

BEFORE
HONOURABLE MR. JUSTICE PRANJAL DAS

ORDER

Date : 23.10.2026

Heard Mr. D Das, Learned Senior Counsel assisted by Mr. N Rahman, learned Counsel for the Petitioner. Also heard Mr. P Nayak, learned Addl. Advocate General appearing for the Respondent No. 1 & 2.

Invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India, assailing an order dated 17.09.2026, passed by the Commissioner, Guwahati Municipal Corporation (GMC), vide memo No. GPL/Misc/147/2025/145, directing the respondent No. 3 to carry out the demolition work of a RCC structure of a building located in M.S Road, Fancy Bazar, Guwahati.

The present writ petition has come up in the backdrop of earlier civil

litigations between the private respondent and the petitioner, with regard to the property in question. In a nutshell, it may be stated, herein, that with regard to the property, the petitioner and the private respondent had entered into a compromise decree. However, for the execution of the same, an execution proceeding was initiated being Title Execution Case No. 11/2014, before the Court of the learned Civil Judge, Kamrup (M), Guwahati. The application of the respondent No. 3 in that execution proceeding, questioning the executibility of the decree, was rejected by the learned Civil Judge, Kamrup (M), Guwahati, which was then taken up in appeal before this Court, by way of a Civil Revision Petition being CRP (I/O) No. 335/2026 and after completion of the arguments, the same has been reserved for judgment by this Court (self). In the Title Suit, being TS No. 574/2025, pending between the parties, an injunction was prayed for from the petitioner side and which was disposed of on 19.09.2025, wherein, the Court of the learned Civil Judge No. 1, Kamrup (M), Guwahati, (Trial Court), finding sufficient grounds, therein, passed an order of temporary injunction restraining the opposite parties, therein, from demolition of the building (Schedule II), till the returnable date. The same was challenged by way of a first appeal being FAO No. 65/2025, which, however, was withdrawn and on the prayer of the appellant side, an observation was made that the

Misc.J No. 879 of 2025, (the injunction matter mentioned above), was to be disposed of within 30 (thirty) days. Subsequently, vide order dated 29.10.2025, passed by the learned Civil Judge, Kamrup (M), Guwahati, the Misc.J No. 879 of 2025, was directed to proceed ex-parte against Opposite Party No. 6, therein, (GMC), and the order of temporary injunction granted, was extended, till disposal of another miscellaneous proceeding {M.J 936/2025}, seeking rejection of the plaint itself.

It is contended that the said order dated 29.10.2025, was again challenged by the respondent No. 3, before this Court, giving rise to CRP No. 480/2025, wherein, the order dated 29.10.2025, was stayed till the returnable date.

Mr. D Das, Learned Senior Counsel has also drawn attention to order dated 08.10.2026, passed by this Court, where, upon the objection filed by the respondent Nos. 1 to 3 in the Civil Revision, the petitioner was given a last chance to file a reply. In this context, it is pointed out that by then, Municipal authorities had already passed an order dated 17.09.2026, giving series of directions for demolition of the said RCC structure. It is submitted that the said order was not brought to the notice of the Court, in the CRP No. 480/2025, on 08.10.2026. Mr. D Das, Learned Senior Counsel has also drawn attention of the Court to

the provisions of Section 342 of the Guwahati Municipal Act, 1971, which may be extracted, hereinbelow :

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

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

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

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

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

(5) If the Commissioner is of the opinion that the building is not capable of being rendered fit for human habitation, he may by notice in writing call upon

the owner to demolish it within a period of thirty days from the receipt of such notice or such longer period as the Commissioner may specify.

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

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

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

It is submitted in the context of this statutory provision of the Act that notice has to be given to the occupant/owner and the party be given an opportunity to file an objection if any, before proceeding with the other steps. It is submitted that in the instant case, the said procedure has not yet been followed.

On the other hand, Mr. P Nayak, learned Addl. Advocate General appearing for the Municipal authority, has taken the Court through the report which was placed before the Municipal authority, regarding the condition of the building and about the necessity for effecting the demolition. It is submitted that the said exercise is required to be done in the interest of public safety, for which the municipal authority is responsible as a public institution. Mr. P Nayak, learned Addl. Advocate

General appearing for the Respondent No. 1 & 2, has also submitted that there is also an order of a Coordinate Bench of this Court, in CRP No. 480/2025, staying the injunction and that any order passed herein, should not have the effect of dilution of the said interim order.

Notice is issued on the writ petition.

Mr. P Nayak, learned Addl. Advocate General appearing for the Respondent No. 1 & 2, may be furnished with extra copies if necessary. Steps of notice upon the respondent No. 3 shall be taken by speed post as well as, by dasti mode.

I have given my consideration to the prayer for stay of the impugned order dated 17.09.2026, made by the learned Senior Counsel appearing on behalf of the petitioner. From the provision of Section 342 of the Act of 1971, it is clear that before exercising powers, with regard to such structures, as envisaged under Section 342 of the Act, notices has to be given and an opportunity of filing objection has to be given as well. If upon giving such opportunity, no objection is filed, the municipal authority is within its powers to go ahead with the process of law with regard to such structures.

Though it is contended by the petitioner side that no such notice, as envisaged under Section 342 of the Act, has been issued, Mr. P Nayak,

learned Addl. Advocate General appearing for the Municipal authorities submits that it has to be ascertained from the other materials as to whether, indeed such notice has been complied with or not. However, from the materials annexed to the writ petition, I do not find any documents to indicate furnishing of any such notices. Further, the aspect of executibility of the decree, which was challenged and pending adjudication in the CRP No. 335/2026, is also awaiting pronouncement by this Court.

Upon considering the various aspects of the matters, it is directed that till the returnable date, the order dated 17.09.2026, passed by the Commissioner, Guwahati Municipal Corporation, shall remain stayed.

Needless to say that all the stakeholders, including the petitioner who is stated to be staying in the building itself, will do the needful, for safety of life and limb.

List this matter again on 16.11.2026.

JUDGE

Comparing Assistant