

**HIGH COURT OF TRIPURA
AGARTALA**

WA No.105 of 2022

1. Sri Subrata Saha, son of Late Sital Chandra Saha, resident of Banamalipur, PO- Agartala, PS- East Agartala, Sub-Division- Agartala, District- West Tripura, PIN-799001

2. Sri Sankar Saha, son of Late Hiralal Saha, resident of Banamalipur, PO- Agartala, PS- East Agartala, Sub-Division- Agartala, District- West Tripura, PIN-799001

.....Appellant(s);

Versus

1. The Municipal Commissioner, Agartala Municipal Corporation, Agartala, West Tripura

2. The Assistant Municipal Commissioner, East Zone, Agartala Municipal Corporation, Agartala, West Tripura

3. Sri Sambunath Saha, son of Late Balaram Saha, resident of Ganaraj Chowmuhani, Banamalipur, PO- Agartala, PS- East Agartala, Sub-Division- Agartala, District- West Tripura, PIN-799001

.....Respondent(s).

For Appellant(s) : Mr. Somik Deb, Sr. Advocate,
Mrs. Riya Chakraborty, Advocate.

For Respondent(s) : Mr. P.K. Biswas, Sr. Advocate,
Mr. Sankar Bhattacharjee, Advocate,
Mr. P. Biswas, Advocate,
Mr. P. Majumder, Advocate,
Mr. Arijit Bhaumik, Advocate.

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE ARINDAM LODH**

Order

04/07/2023

Heard Mr. Somik Deb, learned senior counsel assisted by Mrs. Riya Chakraborty, learned counsel for the appellants, Mr. Arijit Bhaumik, learned counsel for the respondents No.1 and 2-Agartala Municipal Corporation and Mr. P.K. Biswas, learned senior counsel for the private respondent No.3.

2. The appellants, who are on the other side of the road of the building owned by the private respondent, approached this Court with the following prayer- a perusal of which shows that it has a past litigation history:

- “i) Admit this Writ Appeal;
- ii) Call for the relevant records, pertaining to the impugned Judgment & Order dated 28.06.2022 (Annexure-4 supra), passed in WP(C) No.138 of 2022;
- iii) After hearing the parties, in terms of the GROUNDS set forth above, be pleased to quash/set aside the impugned Judgment & Order dated 28.06.2022 (Annexure-4 supra), passed in WP(C) No.659 of 2021 of the Hon’ble Single Judge, and thereafter, allow this Writ Appeal, thereby directing the respondents to comply with the undertaking as well as the directions, issued by this Hon’ble High Court, vide the Judgment & Orders dated 27.11.2018 & 20.06.2019 within the timelines as may be set by this Hon’ble High Court, thereby demolishing the illegal & unauthorized constructions, made by the respondent No.3;
- iv) And pass any other Order(s) as may be deemed fit and proper for ends of justice.”

3. The present appeal arose against the judgment and order dated 30.06.2022 passed in WP(C) No.138/2022 whereby the learned Single Judge dismissed the writ petition on grounds of lack of *locus standi* of the petitioners/appellants herein. After hearing learned counsel for the parties at length; on 18.04.2023, a detailed order was passed which captures the background history of the litigation up to the last inspection carried out by the respondents-Corporation on the premises of the private respondent on 07.04.2022 which revealed certain deviations. The order is extracted hereunder:

“ Considerable arguments have been advanced by the learned counsel for the appellants, private respondent and the Municipal Corporation taking us to the history of the litigation to its present stage. The report of the learned Advocate Commissioner has been served upon the learned counsel for the parties in terms of the order dated 15.02.2023.

The present appeal by the petitioner is against the judgment dated 30.06.2022 whereby the learned Single Judge had dismissed the writ petition on the ground of lack of locus standi of the petitioner/appellant. A report of the present situation of deviations in the building of the private respondent which were non-compoundable was brought on record in the writ petition bearing letter No.171(A) dated 07.04.2022. Learned Single Judge vide impugned judgment had upon consideration of rival submissions of the parties and having heard the Municipal Commissioner who was present in Court directed the Municipal Commissioner to look into the matter in its entirety. An observation was made that the building had been constructed after obtaining approval from the Agartala Municipal Corporation in different periods in the years 1983 and thereafter and there has been a change in the Municipal Rules periodically. The Commissioner was also asked to consider all these aspects and analyze the permissible deviations. He would also suggest the unofficial respondent regarding removing the unauthorized construction by causing minimum damage to the property and consider compounding of deviations as per law.

As per the private respondent, it had demolished certain part of the deviations in the building earlier on 21.01.2020.

Be it noted here that initially the Case No.7(88)-UDD of 2016 instituted against the private respondent was decided by the Assistant Municipal Commissioner and affirmed in appeal vide order dated 22.02.2018 by the Tribunal (Annexure-1 to the memo of appeal). The challenge thereto by the private respondent in WP(C) No.371 of 2018 was disposed of with certain directions upon the Assistant Commissioner, Agartala Municipal Corporation to carry out an inspection of the subject matter of the *lis*, i.e. house of the writ petitioner/private respondent herein to ascertain the deviations from the original sanctioned municipal plan. The private respondent/petitioner therein had undertaken to demolish all constructions existing on the spot as found out in excess of the sanctioned municipal plan at his own cost within a stipulated period. That undertaking was taken on record. Thereafter, the private respondent approached this Court in WP(C) No.196 of 2019 (Annexure-4 to the memo of appeal) which got disposed of with the following observations and directions:

"[13] Having regard to the submission made by the learned counsel for the parties, this court is of the view that the building that was constructed in the year 1983 as per the approved plan and during its construction, no objection was raised from any quarters, should not be brought under the demolition exercise. However, so far the building that has been constructed in terms of the plan that was approved under No.HC/5024/16/AMC/4994-28 dated 30.04.2016 and the other approved plan (three storied) vide No.AMC/ EZ/ 21/ 3605/172810 dated 28.12.2017 and deviation from the plan has been demarcated the said exercise, the deviated part be demolished by the petitioner within a period of 15 (fifteen) days at his own expenses. For the purpose of demolition, Agartala Municipal Corporation shall take aid of the physical inspection team which shall identify that part of

the building which has been constructed in terms of the said building plan dated 30.04.2016. The Municipal Corporation shall demarcate such parts of the building, which are constructed in deviation of the approved plan for purpose of demolition, if not already demolished by the petitioner, within a period of 15 (fifteen) days from the day of receipt of this order. The demolition by the petitioner shall be completed within 15 (fifteen) days from the date of the said demarcation [the refurbished new report]. The petitioner shall receive a copy of the refurbished report in terms of this order.

[14] Agartala Municipal Corporation and the respondents No.2 and 3 are therefore directed to furnish the refurbished report of deviation to the petitioner within a period of 15 (fifteen) days from the day of receipt of this order. If the petitioner failed, for any reason, to demolish the unauthorized part, the respondents No.1, 2 and 3 shall execute the demolition at the expenses of the petitioner. The expenses may be recovered as the due to the Municipal Corporation. Such demolition will not purge the petitioner from the contempt action."

The private respondent again preferred WP(C) No.69 of 2020 which was dismissed as withdrawn vide order dated 22.02.2021. The petitioner herein thereafter made a representation before the Agartala Municipal Corporation on 18.09.2021 for implementation of the judgment dated 20.06.2019 and 22.02.2021 in WP(C) No.196 of 2019 and WP(C) No.69 of 2020 respectively and thereafter approached this Court by filing Cont.Case(Civil) No.104 of 2021 for execution of the judgment dated 20.06.2019. The same was, however, dismissed as not pressed with liberty to the petitioner to initiate appropriate action at law for execution of the said judgment and order. Thereafter, the instant writ petition has been preferred by the petitioner primarily for execution of the judgment passed earlier.

Learned counsel for the private respondent has referred to the affidavit filed by the Municipal Corporation in WP(C) No.69 of 2020, in particular paragraphs-7 and 8 in order to submit that the inspection that was carried out in terms of this Court's orders dated 27.11.2018 and 20.06.2019 actually got the second floor building inspected inadvertently.

These events in the journey of this litigation are being noticed hereinabove only to indicate that the stand of the Municipal Corporation has also changed after the original order of the Assistant Municipal Commissioner dated 03.09.2016 as affirmed in appeal by the Municipal Appellate Tribunal. Taking this change in stand from time to time, it appears that the learned Single Judge had directed the learned Municipal Commissioner to consider the matter in entirety. By the previous order dated 09.12.2022 taking note of the nature of the dispute, a learned Advocate Commissioner was appointed to inspect the disputed site and examine all the records including the sanctioned plan of the

private respondent and also to verify up to what extent the building is extended in breach of the sanctioned plan. He was also requested to examine as to how such extension affects the free passage of air and lights to the building of the petitioner. The report has been submitted and copies thereof have been served upon learned counsel for the parties pursuant to the order dated 15.02.2023. The report is extracted hereunder:

"In compliance of the order dated 09.12.2022 passed in W.A. No.105 of 2022 of the Hon'ble High Court of Tripura, I visited the disputed site on 24.12.2022 at about 11 hours, and I examined all the papers and sanctioned plan of the Private Respondent. I carefully inspect the building of Private respondent and the houses of the appellants. I took all the measurements in presence of the both the Appellants and Private Respondents. Photography also been taken by the profession photographer viz Sri Kamal Mitra from different angles of the disputed building as well as the houses of the Appellants. After taking measurement I prepared **hand sketch map** of the site in presence of both the parties. The Private Respondent signed in the said map but both the Appellants refused to put their signature as I have not worked according to their choice/directions and for that reason they denied to pay the fees as fixed by the Hon'ble Court. The details report is mentioned below:-

1. The difference between the houses of Appellant No.1 to the Private Respondent is 13'11" (Thirteen feet and eleven inches) boundary wall to boundary wall.
2. There is a 13'11" (Thirteen feet and eleven inches) wide road between the houses of the Appellant No.1, Sri Subrata Saha and the private Respondent. The said road is extended up to the main road in East-West direction. In the approach of the said road the house of the Appellant No.2 i.e. Sri Sankar Saha is situated.
3. That the Distance between the house of the Appellant No.2 i.e. Sri Sankar Saha and Private Respondent is 133'06" (one thirty three feet and six inches).
4. The houses of both the Appellants are no way connected within the boundary of the Private Respondent i.e. Sri Sambhunatha Saha. Houses of the Appellants are far away from the house of the Private Respondent.
5. That, there is a gap between disputed building of the private Respondent and his boundary is 3'06" (Three feet and Six inches), on the other hand the gap between the go down of Appellant No.1 i.e. Sri Subrata Saha and his boundary wall is 3'03" (Three feet and three inches).
6. That, the distance between dwelling house of Appellant No.1 i.e. Sri Subrata Saha and his boundary wall is 25'10" (Twenty five feet and ten inches).
7. That, the distance between the disputed building of the private Respondent viz Sri Sambhunath Saha and the

house of the Appellant No.1 is 44'03" (Forty four feet and three inches).

8. That, there is no gap between the building of Appellant No.2 and his boundary in the Northern side.

According to Appellants, extension has been made in back side of the building of the Private Respondent. If it so, no way Appellants would be affected, because the back side of the disputed building is situated in the southern side of disputed building, it would more clear from my hand sketch map. I beg to say that only expert can say how far deviation has been made or not."

The sketch map in pencil in the handwriting of the learned Advocate Commissioner is enclosed with the report.

Learned counsel for the petitioner has not disputed that there exists a road of width of 13 feet 11 inches between the house of the private respondent and the petitioner. At this stage, though we may not like to observe as to the role of the petitioner in the present proceedings but taking into consideration the last inspection report of the Assistant Municipal Commissioner dated 07.04.2022 and the report of the learned Advocate Commissioner dated 04.01.2023, we are of the view that the statutory authority, i.e. the Municipal Corporation is required to come forth with a clear stand on this issue as per their own inspection carried out earlier and the by-laws governing the sanction of building plan under the Agartala Municipal Corporation. The respondent-Corporation has to make it clear as to how they intend to proceed in the matter. The statutory mandate upon the Municipal Corporation to ensure that buildings are constructed as per the sanctioned plan and no deviations beyond compoundable limits are permitted to continue are required to be performed by them. In the background of the conspectus of facts and circumstances taken note hereinabove, learned counsel for the Corporation prays for and is allowed 10(ten) days time to come with a clear stand on this issue so that the matter can be disposed of on the next date.

Let the case be listed on **02.05.2023**."

4. Since the respondents-Corporation was asked to clear its stand on the issue, an additional affidavit was filed on 12.05.2023 pursuant to the order dated 18.04.2023 in which certain categorical statements were made. The stand of the respondents-Corporation contained in the affidavit dated 12.05.2023 and in the additional affidavit filed thereafter by the respondent No.3 are incorporated in the order dated 27.06.2023 which are also extracted hereunder to avoid repetition of the narration of facts:

“Reference is made to the order dated 18.04.2023 in which the extract of the operative portion at Para 13 of the Judgment & Order passed in WP(C) No.196/2019 is quoted.

The respondent-Corporation has filed an affidavit pursuant thereto on 12.05.2023 wherein the following statements have been made:

“3. That, I also state that on 07.04.2022 the Assistant Engineer, Division IV, Agartala Municipal Corporation carried out inspection of the building of the Private Respondent No.3. As per the report the deviation in building of the Private Respondent No.3 are non-compoundable due to following reasons:

a) Side Open Spaces are deviated more than 20%. For maintaining 20% the side space should have been 980.00 mm.

I. In the North Side 40.00 mm to 0.00 mm needs to be demolished.

II. In the South Side 412.00 mm to 697.00 mm needs to be demolished.

III. In the East side 308.00 mm to 370.00 mm needs to be demolished.

IV. In the West Side 145.00 mm to 220.00 mm needs to be demolished.

b) Cantilever of 320.00 mm in the North Side needs to be demolished as the cantilever is 1220.00 mm. Maximum deviation allowed is till 900 mm.

c) Building has no parking space. This Hon’ble High Court in W.P.(C) PIL No.7/2019 vide order dated 22.07.2019 has issued direction not to approve any building plan without parking space.

Copy of the report date 07.04.2022 is annexed herewith and marked as ANNEXURE-X.

4. That, this Hon’ble Court vide order dated 22.07.2019 passed in W.P.(C) PIL No.7/2019 held that ***“We notice that under the provisions of the Tripura Municipal Act, 1994, the Tripura Building Rules, 2017 were notified whereby it was almost mandatory for every building beyond 70 sq. meters of covered area to have a car parking. However, these rules were amended vide a notification No.F.2(466)-UDD/GL/TCPO/2018/599-627 dated 19.02.2019, whereby the said provision was done away with, effectively that, in the event of shortfall of parking place of any building up to 3(three) and more than 3(three) stories, the requirement of prepaid parking space can be dispensed with by paying a compounding fee of 1,00,000 (one lakh); 1,50,000 (one and half lakh) respectively.....***

In the meanwhile, we direct that no authority, be it the Government or the Commissioner, Agartala Municipal Corporation, shall sanction/approve any building plan which does not meet the requirement of parking, as laid down in the Tripura Building Rules, 2017. In any case, all approval shall be placed before the Court.”

Copy of the order dated 22.07.2019 passed in W.P.(C) PIL No.7/2019 by the Hon'ble High Court of Tripura, Agartala is annexed herewith and marked as ANNEXURE Y.

5. That, I state that as per said order dated 22.07.2019 passed in W.P.(C) PIL No.07/2019 no building plan can be sanctioned/approved without parking space as laid down under Tripura Building Rules, 2017.

6. That, I state that the building of the Private Respondent No.3 can only be regularized/compounded upon removal/demolition of the aforesaid deviations which are beyond the compounding limits as mentioned in the Report dated 07.04.2022 and in the preceding paragraphs No.3 and 4.”

An additional affidavit has been filed by respondent No.3 to traverse the statement made by the affidavit dated 12.05.2023 of respondents No.1 and 2; Para 6 to 9 thereof is quoted hereunder:

“6. That I further submit that in the southern side I have demolished the construction in the south side exceeding the permissible limits as per judgment and order passed In WP(C) 196/2019. I have submitted my compliance report along with photograph to the Assistant Municipal Commissioner.

7. That I submit that as per inspection report dated 19.11.2019 there is no deviation in the north side. And in the west side as reflected in the affidavit that 145.00 mm to 220.00 mm require to be demolished. I have filed the WP(C) 69/2020 seeking compounding of deviation since in the west side there exist main pillar of the building as per building sanctioned plan dated 30.04.2016. Wherein the respondent no.1 and 2 by filing additional affidavit has stated that due to pendency of the Writ Petition the compounding could not be done. I have withdrawn the Writ Petition on the basis of the said statement made in the additional affidavit. I further submit that as per order of the Hon'ble High Court dated 27/11/2018 and 20/06/2019 the inspection was carried out but inadvertently second floor of building was inspected.

8. That I submit that the inspect report Annexure-X to the affidavit shows that there is no parking space. Which is not correct I have parking space for one vehicle (Car) measuring 12ft x 20ft. I have never sought for any building plan after the order of the Hon'ble High Court passed in WP(C) PIL 07/2019. Thus the respondent no.1 and 2 may be directed to compound the deviation which is within the permissible limit as per building sanctioned plan dated 30.04.2016.

9. That I humbly submit that the original litigation is relating to the deviation in the plan dated 30.04.2016. As per judgment and order dated 20.06.2019. And the Municipal Authority has inspected the building as stated

earlier, two times after passing the said order dated 20.06.2019 each report is at variance.

Mr. P.K. Biswas, learned senior counsel for the respondent No.3, has pointed out that pursuant to the order passed in WP(C) No.196/2019, respondent No.3 had removed some part of the deviations. The present report of 07.04.2022, relied upon by respondent No.1 and 2, does not appear to take into account the demolitions or removal of deviations undertaken by the respondent No.3. As a matter of fact, respondent No.3 has a parking space admeasuring 12ft x 20ft within the building area which controverts the statement made at Para 3(c) of the affidavit dated 12.05.2023 of respondents No.1 and 2.

Mr. Arijit Bhaumik, learned counsel for the Corporation, submits that except the part of the report dated 07.04.2022 relating to the parking space, respondent No.3 also does not dispute the deviations found during inspection on that day.

As such, in the light of the stand of the respondents No.1 and 2 and also reinforced by the order dated 22.07.2019 passed in WP(C)(PIL) No.7 of 2019, no building plan can be sanctioned/approved without parking space as laid down under Tripura Buildings Rules, 2017.

We may profitably point out again that in the judgment and order passed in WP(C) No.196 of 2019, the learned Writ Court had made it clear that the construction of the building in the year 1983 without any objection should not be brought under demolition exercise. However, constructions made as per building plan dated 30.04.2016 and other approved plan (three-storied) dated 28.12.2017 and deviations therefrom are susceptible to demolition within a timeframe.

Since, it has been pointed out by the respondent No.3 that some part of the deviations have already been demolished which have not been taken into account in the report dated 07.04.2022, learned counsel for the Corporation shall seek instructions and clarify whether the report of 07.04.2022 confines itself to the building plan dated 30.04.2016 and 28.12.2017, or goes back to the original structure constructed under the building plan of 1983.

We, however, make it clear that if the report is confined to the above two building plans of 2016 and 2017 and except the parking space, the rest of the deviations have been found to be existing, respondent No.3 will be under a legal obligation to remove it within a timeframe; otherwise the Corporation will demolish it at the cost of respondent No.3 also within a timeframe. It goes without saying that demolition is to be undertaken for the deviations which are non-compoundable.

List this matter on **04.07.2023**.”

On the last occasion, this Court wanted the respondents-Corporation to make it clear whether the report dated 07.04.2022 is confined to the building plans of 2016 and 2017. If it was found that except the parking space, the rest of the

deviations were found to be existing, respondent No.3 was under a legal obligation to remove it within a timeframe; otherwise the Corporation would demolish it at the cost of respondent No.3 thereafter within a timeframe. It was also indicated that the demolitions are to be undertaken for the deviations which are non-compoundable.

5. Today when the matter has been taken up, Mr. Arijit Bhowmik, learned counsel for the respondents-Corporation, on written instructions, submits that the deviations are related to the building plan of the year 2017. He also submits that the report dated 07.04.2022 as regards absence of parking space, may not be relevant as the building plan was sanctioned prior to passing of the order dated 22.07.2019 in WP(C)(PIL) No.07/2019. However, he submits that rest of the deviations, if they stand, the respondent No.3 is obliged to remove the same, failing which the Corporation will have to demolish it at the cost of the respondent No.3.

6. We have taken note of the latest instructions furnished by the respondents-Corporation. Having regard to the issue at hand, now the litigation deserves to reach a quietus as it has been continuing since institution of Case No.7(88)-UDD of 2016 in relation to the deviation allegedly undertaken by the respondent No.3 in construction of his building. There has also been more than one round of litigation before this Court earlier. The inspection report of the Corporation dated 07.04.2022 has pointed out certain deviations which are also reflected in the orders quoted hereinabove. It also needs to be observed that earlier, the Writ Court had directed the private respondent to remove the demarcated part of the building which are constructed in deviation of the approved plan within 15(fifteen) days from the date of receipt of the order

passed in WP(C) No.196/2019. Respondent No.3 claimed to have demolished certain part of it thereafter which has also been taken note of in the previous order dated 27.06.2023.

7. However, the Corporation has undertaken further inspection on 07.04.2022 which has found certain deviations existing even after the said demolition by the respondent No.3. The exercise of inspection, therefore, cannot go ad infinitum as it is the statutory responsibility of the Corporation to ensure that buildings are constructed as per sanction plan and no deviations beyond compoundable limits are permitted to continue.

8. As such, taking cue from the observations made in the earlier two orders, this Court directs the respondent No.3 to remove the deviations pointed out in the report dated 07.04.2022 within a period of 6(six) weeks from today. Needless to say, deviations, which are non-compoundable as indicated in the report dated 07.04.2022, have to be removed. The Corporation will carry out an inspection immediately thereafter to verify whether the deviations have been removed by the respondent No.3 or not. In case, the Corporation finds that the deviations or part of it still remains, the respondents-Corporation would be obliged to remove the same within a period of 4(four) weeks thereafter at the cost of the respondent No.3.

9. Appeal stands disposed of accordingly. Pending application(s), if any, also stands disposed of.

(ARINDAM LODH), J

(APARESH KUMAR SINGH), CJ

Pijush