

**HIGH COURT OF TRIPURA
AGARTALA**

W.A. No.127/2022

Sri Sujit Kumar Sen

.....Appellant(s).

V E R S U S

The Chief Executive Officer, Kailashahar Municipal Council & another

.....Respondent(s).

For Appellant(s) : Mr. Alik Das, Advocate.

For Respondent(s) : None.

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

Order

26/04/2023

Heard Mr. Alik Das, learned counsel for the appellant.

2. By the impugned judgment dated 21.06.2022 passed in WP(C) No.484 of 2022, the learned Writ Court has refused to interfere in the matter under Article 226 of the Constitution of India while observing that the petitioner would have a more effective remedy before the Civil Court.

3. Brief facts of the case are as under:

Petitioner is a resident of Kailashahar and owner of property in Khatian No.4370 under Mouja-Kailashahar, Sub-Division and T.K.- Kailashahar, Revenue Circle-Kailashahar, vide Sabek Dag No.2561(P), Hal Dag No.2792/10347, 2793/10338, of Bastu Nal class of land. He has

approached the Writ Court on alleged inaction of the Kailashahar Municipal Council in taking adequate action in respect of the violations made by the respondent No.2 in his permanent building which was made in violation of the Tripura Building Rules, 2004. According to the petitioner, the official respondents did not heed to the representation filed by the petitioner and, therefore, he has been compelled to approach the Writ Court.

4. Learned counsel for the appellant has reiterated the grounds taken before the Writ Court which primarily are regarding inaction on the part of the statutory authority in taking steps in respect of the building plan violations committed by the respondent No.2 under the Tripura Building Rules, 2004 allegedly not maintaining necessary space for the setoff area.

5. Learned Single Judge, however, found that the issue involves disputed questions of fact which can be properly agitated before a competent Court of civil jurisdiction if necessary through evidence by the parties.

6. Upon hearing learned counsel for the appellant and after going through the Writ records and on perusal of the impugned judgment, we do not find any infirmity in the decision of the learned Single Judge. Indeed, the grievance of the petitioner involves inquiry on facts as regards the alleged violation of building plan made by the respondent No.2 in teeth of the Tripura Building Rules, 2004. Such inquiries may lead to appropriate

proceedings before the concerned Municipal Council which the Writ Court is not equipped to deal with at the first instance. In the present case, it appears that the Municipal Council has not proceeded or taken cognizance of the representation of the petitioner. Even in such an event, the concerned party against whom such allegations have been made is also required to be noticed before a decision is taken in terms of the Tripura Building Rules, 2004.

7. In such circumstances, without interfering in the order of the learned Single Judge, we are of the view that the writ petitioner may pursue his representation before the Chief Executive Officer, Kailashahar Municipal Council which may be considered in accordance with law, of course after due opportunity to the affected party. Petitioner may have a remedy before the appropriate Court of civil jurisdiction thereafter as is permissible in law.

8. The appeal is disposed of with the aforesaid observations.

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

(ARINDAM LODH), J

(APARESH KUMAR SINGH), CJ

Pulak