

HIGH COURT OF TRIPURA

A_G_A_R_T_A_L_A

WA. No.18 of 2021

1. Sri Swapan Das @ Swapan Chandra Das, son of late Anil Ch. Das, resident of Maharaj Ganj Bazar, Old Gangail Road, P.O. Agartala P.S. West Agartala, District: West Tripura.

.....Appellant

-VERSUS-

1. The Agartala Municipal Corporation, represented by the Municipal Commissioner, City Centre, H.G. Basak Road, Agartala-799001.
2. The Municipal Commissioner, Agartala Municipal Corporation, City Centre, H.G. Basak Road, Agartala-799001.
3. The Assistant Commissioner, Central Zone, Agartala Municipal Corporation City Centre, Agartala-799001.
4. Smti. Suvra Das (Roy), wife of Sri Dipen Roy, resident of Maharaj Ganj Bazar, P.O. Agartala, P.S. West Agartala, District: West Tripura.

..... Respondents

WA.No.20 of 2021

1. Sri Ajit Das, son of Sri Himangshu Das, resident of Maharaj Ganj Bazar, Old Gangail Road, P.O. Agartala, P.S. West Agartala, District: West Tripura.

.....Appellant

-VERSUS-

1. The Agartala Municipal Corporation, represented by the Municipal Commissioner, City Centre, H.G. Basak Road, Agartala-799001.
2. The Municipal Commissioner, Agartala Municipal Corporation, City Centre, H.G. Basak Road, Agartala-799001.
3. The Assistant Commissioner, Central Zone, Agartala Municipal Corporation City Centre, Agartala-799001.

4. Sri Partha Ch. Das, son of late Abani Mohan Das, resident of Maharaj Ganj Bazar, P.O. Agartala, P.S. West Agartala, District: West Tripura.

..... Respondents

B_E_F_O_R_E
HON'BLE MR. JUSTICE T. AMARNATH GOUD
HON'BLE MR. JUSTICE BISWAJIT PALIT

For Appellant(s)	:	Mr. Paramartha Datta, Advocate. Mr. Alik Das, Advocate.
For Respondent(s)	:	Mr. A. Bhowmik, Advocate.
Date of hearing	:	06.03.2024
Date of delivery of judgment	:	
And order	:	11.03.2024
Whether fit for reporting	:	YES

JUDGMENT & ORDER

[T. Amarnath Goud, J]

Heard Mr. P. Datta, learned counsel and Mr. A. Das, learned counsel appearing for the appellants also heard Mr. A. Bhowmik, learned counsel appearing for the respondent, AMC.

[2] These writ appeals are consolidated for disposal by a common judgment as an identical controversy wades through these writ appeals. The present appeals have been filed under Rule-2 of Chapter V-A of the Guwahati High Court Rules presented against the common judgment and order dated 20.10.2020 passed in WP(C) No.148 & 149 of 2020.

[3] The facts relating to W.A. No.18 of 2021 is that the appellant was granted Touji No. 6/85/F by the Agartala Municipal Corporation (AMC) for land measuring 97.5 sq. ft. in the year 2011 on which he has been carrying on 'Painting Business'. By order dated 12-02-2020, the AMC terminated the said Touji. The appellant challenged the said order by filing writ petition in 2019 vide WP(C) 1179 of 2019. By a common Judgment the Hon'ble High Court on 31-01-2020 uphold the power of AMC to terminate the said Touji, however, the Court in observation held to consider the

request of appellant for fair re-settlement if the appellant is interested in accepting the alternative offer as far as to the best possible extent.

[4] As follow up, the AMC carried out fresh exercise by re-allocating the said piece of land to the respondent No.4 a similarly situated evicted Touji holder as part of 600 sq. ft. area granted to her by a new Touji, while instead offered to the appellant a premises of 60 sq. ft. in Radhanagar Shopping Complex. As aggrieved, the appellant filed writ petition before this Court and subsequently, by a common judgment and order in WP(C) 149 of 2020 disposed the same with observation that there is no error and arbitrariness in the action of the AMC.

[5] Subsequently, the AMC also initiated a process for distribution of space at Old Cow Market at M.G. Bazar to the appellant and others who were allotted space at Radhanagar Shopping Complex. As due to *bona fide* mistake, on behalf of the appellant it was not argued before the Court in WP(C) 149 of 2020 that AMC as respondents itself admitted the requirement of respondent No.4 is at least 450 sq. ft. but granted to her in new Touji 600 sq. ft. including the occupied space of the appellant in which both of them can be accommodated without adversely effecting the plan of AMC and as new development of scope to distribute plan at Old Cow Market at M.G. Bazar arose in which the Respondent No.-4 can be accommodated without disturbing the occupancy of the appellant. Hence, the present writ appeal against the judgement and order dated 20-10-2020 in WP(C) No. 149 of 2020 is filed.

[6] The facts relating to W.A. No.20 of 2021 is that appellant was granted Touji No. 3/86/D by the Agartala Municipal Corporation (AMC) for land measuring 67 sq. ft. in the year 2013 on which he has been carrying on 'Painting Business'. By order dated 16-09-2019, the AMC terminated the said Touji. The appellant challenged the said order by filing writ petition in 2019. By a common Judgment this Court on 31-01-2020 uphold the power of AMC to terminate the said Touji, however, the Court in observation held to consider the request of appellant for fair re-settlement if the appellant is

interested in accepting the alternative offer as far as to the best possible extent.

[7] As follow up, the AMC carried out fresh exercise by re-allocating the said piece of land to the respondent No.4 a similarly situated evicted Touji holder as part of 200 sq. ft. area granted to him by a new Touji, while instead offered to the appellant a premises of 60 sq. ft. in Radhanagar Shopping Complex. As aggrieved, the appellant filed writ petition before this Court and the Court in a common judgment and order in WP(C) 148 & 149 of 2020 disposed the same with observation that there is no error and arbitrariness in the action of the AMC.

[8] Subsequently, the AMC also initiated a process for distribution of space at Old Cow Market at M.G. Bazar to the appellant and others who were allotted space at Radhanagar Shopping Complex. As due to *bona fide* mistake, on behalf of the appellant it was not argued before the Court in WP(C) 148 of 2020 that the AMC as respondents itself admitted the requirement of respondent No.4 is at least 450 sq. ft. but granted to her in new Touji 200 sq. ft. including the occupied space of the appellant in which both of them can be accommodated without adversely affecting the plan of AMC and as new development of scope to distribute plan at Old Cow Market at M.G. Bazar arose in which the respondent No.-4 can be accommodated without disturbing the occupancy of the appellant, this writ appeal against the judgement and order dated 20-10-2020 in WP(C) No. 148 of 2020 is filed.

[9] Having heard the parties and gone through the material evidence on record, the Court has observed as under:

“Before closing, however it may be noted that the festival session is approaching fast. The petitioners are occupying the present places since a long time. Under the circumstances, while dismissing the petitions it is provided that the petitioners shall not be evicted from the present places till 15th December, 2020. If thereafter they agree to shift to the new places which the Commissioner has offered them, they would be granted toujis at such new sites. In other words, merely because the petitioners have approached this Court, the offer of the AMC to resettle them at new places would not be withdrawn”

[10] Being aggrieved by and dissatisfied with the same, the present appeals have been preferred by the appellant before this Court for redress.

[11] Learned counsel appearing for the appellant has submitted that the very fact that the area which the appellant was occupying has been allotted to the respondent No.4 would show that the eviction of the appellant was not necessary for the stated purpose of removing the encroachments or to rejuvenate the water body in the area. If the area occupying by the appellant could be allotted to someone else, there was no reason why the appellant should have been disturbed.

[12] It was not argued due to bona fide mistake that though the AMC as respondents itself in affidavit in opposition admitted that the requirement of respondent No.4 is at least 450 sq.ft. with 20 ft wide passage, new touji of 600 sq.ft. has been granted by the AMC. It could have been possible to accommodate both the respondent No.4 and the appellants within the 600sq.ft. without adversely affecting the DPR for rejuvenation of the water body of the locality. Even there would have been no requirement to disturbing the occupancy of the appellant to accommodate the respondent No.4 and if required only by granting fresh Touji by reallocating internal boundaries. It was also not argued that though the AMC has admitted that while the respondent No.4 presently occupying 97.5 sq. ft. area in M.G. Bazar, the AMC has granted to him new Touji of 200 sq.ft.

[13] It has been further stated that subsequent development of scope to distribute land at Old Cow Market of M.G. Bazar among the shoppers against whom notice of eviction were served by the AMC and offered space at Radhanagar Shopping Complex, has resulted the scope to re-allocate appropriate space to the respondent No.4 without disturbing the present occupancy of the appellant.

[14] The main ground raised by the appellant in the present appeal is that the area which the appellant was occupying under touji, is allotted to respondent No.4. According to the appellant, thus, if the same area could be allotted to someone else, there was no reason why the appellant should have

been disturbed. Counsel for the appellant submitted that the very fact that the same area which the appellant was occupying has been allotted to respondent No.4 would show that the eviction of the appellant was not necessary for the stated purpose of removing the encroachments or to rejuvenate the pond in the area.

[15] It has been further averred that both the appellant has submitted their representation before the Municipal Commissioner, AMC stating that after cancellation the touji by order dated 12.02.2020 the land has been re-allotted in favour of the respondent No.4 in the present appeals. The toujis are cancelled on the ground that cancellation has been issued for beautification, security and safety measures. But on the other hand after cancellation of the toujis the same toujis have been re-allotted in favour of the respondent No.4 herein.

[16] In view of above it is crystal clear that the ground on which toujis were cancelled was not genuine and the Court was misled by the AMC by saying that the cancellation of toujis standing in the names of the appellant was called for the beautification of the area and for safety and security measures.

[17] During the pendency of the writ appeal, the Municipal Commissioner of Agartala Municipal Corporation distributed space among 11 shopkeepers through lottery at Old Cow Market at M.G. Bazar out of 15 shopkeeper who are to be evicted from the existing place at M.G. Bazar, Agartala in accordance with its memo dated 31.12.2020. Learned counsel for the respondent AMC stated that AMC is ready to allot one of the remaining shops to the appellant by lottery. But, the AMC on intervention of the Court offered another evicted touji holder namely, Sri Santanu Saha admeasuring 524.14sq.ft. in the same locality of the present appellant at North East side on the ground that the site is not in the proposed development area of the pond and AMC also clarified the Court that there is no threat of eviction or demolition from the said site, which is reflected in

order passed by this Court on 25.11.2020. Hence, it is crystal clear that there is no need to disturb the present occupancy of the appellant too.

[18] Mr. A. Bhowmik, learned counsel appearing for the respondent AMC in support of his case has submitted that all the actions taken by the respondents are in public interest. Banking upon the direction and observation of this Court application of the respondent No.4 and the petition was disposed of vide order dated 12.2.2020 and 15.2.2020. The requirement of the respondent No.4 was at least 30 ft. x 15 ft. with 20 ft. wide passage at the same place or nearby. There is no space having 450 sq.ft. area in Radhanagar Shopping Complex with passage of 20 ft. wide so, the Commissioner has caused resurvey on field to see if it is possible to accommodate the respondents along with 2 others with reduced tauji area at the same place or nearby place without compromising the development project of M.G. Bajer West Pond. Survey team was accompanied by consultant from Project Management Consultation of Agartala Smart City Ltd. (AGCL).

[19] Considering the survey report on physical measurement the area of 600 Sq ft was offered to the respondent No. 4 for running iron rod shop and has been allotted touji of 600 Sq ft area afresh with measurement of 30ft x 20 ft, being a long road side and the respondent No. 4 has accepted the same. The allotment to respondent No.4 was given without adversely affecting the DPR for rejuvenation of the pond area. Little sacrifice has been done so far parking space is concerned. AMC has to do it because it has no more land either in the Radhanagar Shopping Complex with such vast area for accommodation to the respondent No.4 following the observation of this Court.

[20] The appellants' land is limited to small portion of land in old touji whereas, the appellant can very well run his business at the complex having masonry building area in commercial area and it was so done so that his livelihood is not affected. As per verdict the appellant cannot choose a

place wherefrom removal was ordered. No right of the appellant has been invaded by any act of the respondents.

[21] Following the direction contained in the judgment and order dated 31.01.2020 in W.P.(C) 1178-1184 of 2019, given by this Court, and for fair resettlement of the appellant the following steps were taken. (1) The touji areas of persons shall not be drastically reduced in terms of area. (1) Re-settlement was done only to such place where it is well connected by roads. (iii) re-settlement was done only to those places which have commercial activity. Radhanagar location fulfils all the criteria of the case of the appellant. Keeping the observation of this Court, every effort was taken by the Municipal authority for resettlement of the evicted persons on humanitarian ground, without compromising the project area. Further, it was also considered the distance from the existing location of evicted person's to Radhanagar location which is less than 3 kms.

[22] The appellant was asked if he would accept the allotment at Radharnagar shopping complex or he would like to shift in any other alternative places. But, he stated that he did not know any other place. Considering the order of this Court the appellant was given option for resettlement at the Radharnagar Shopping Complex which fulfils all the criteria laid down by the judgment dated 31.01.2020 with a commercial area, good connectivity and a much better option than the existing location of the business premises. The appellant was instructed to remove the existing shop within next 7 days and indicating willingness for allotment of shop in Radhanagar Shopping Complex failing which, AMC shall remove his shop for the development of the MG Bazaar pond.

[23] Mr. Bhowmik, learned counsel appearing for the respondent AMC has drawn our attention to the judgment of the learned Single Judge wherein it has been stated that the official respondents have also fully explained why the respondent No.4 has been resettled at the said site. It is stated that he was holding a much larger area and it was not possible to find a suitable area of similar size without incurring substantial expenditure.

[24] After obtaining a survey report he was offered a reduced area which he has accepted. In the process, it may be that a portion of the area which the appellant was occupying forms part of the reallocated touji to the respondent No.4. However, when resettlements of such substantial number occupants are to be made, reallocation of internal boundaries and toujis is bound to happen. Merely because the respondent No.4 has been allotted a portion of the area presently occupied by the appellant, would not mean that the action of the respondents is arbitrary or *mala fide*.

[25] In view of above arguments advanced by the learned counsel appearing for the parties, this Court is of the view that the function of the Court is to see that lawful authority is not abused but not to appropriate to itself the task entrusted to that authority. It is well settled that a public body invested with statutory powers must take care not to exceed or abuse its power. It must keep within the limits of the authority committed to it. It must act in good faith and it must act reasonably. The Directive Principles of State Policy set forth the humanitarian socialist precepts which were the aim of the India Social revolution. The Directive Principles and fundamental rights mainly proceed on the basis of human rights freedom to nothing else but a chance to be better. It is this liberty to do better is the theme of Directive Principles of State Policy.

[26] Directive Principles are aimed at securing social and economic freedoms by appropriate State action. The Fundamental Rights are intended to foster the ideal of a political democracy and to prevent the establishment of authoritarian rule but they are of no value unless they can be enforced by resort to courts. So they are made justiciable. However, it is also evident that notwithstanding their great importance, the Directive Principles are less important than Fundamental Rights or that they are not binding on the various organs of the State. The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

[27] The State shall, in particular, strive to minimize the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, nor only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations. The citizens, men and women equally, have the right to an adequate means to livelihood. Equal justice and free legal aid- the State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

[28] Facts of the connected appeals are similar on all material aspects and they are therefore not discussed separately. This Court repeatedly more than half dozen times has advised learned counsel appearing for the respondent-AMC to obtain necessary instructions if the respondent AMC is going to take any suitable action to initiate and specifies between the appellant and the unofficial respondent in terms of allocation of land or they would have any alternative proposal. The learned counsel for the respondent AMC insisted to proceed with the matter and concluded his argument and after some considerable time when this Court was about to pronounce the order, he sought for an adjournment to get instruction and this Court has no hesitation to decline the same and consequently, the matter was reserved for judgment.

[29] This Court is always stand with the State for its development and the appellant being allotted has no *locus standi* to question the action of the respondent if the said allotment of land is taken for development of the city and for public purpose etc. But, here is the case where under the garb of development, the action of the respondent in shifting the appellant giving his land to the unofficial respondent i.e. respondent No.4 in both the appeals, is one which this Court has no hesitation to say that the action of the respondent AMC is biased and discriminatory.

[30] The official respondent cannot kick in the stomach of the appellant to make a rich person richer. The action of the respondent in not disclosing the fact with regard to the extent of land which is taken away from the appellant and allotting to the unofficial respondent is silent and in the argument, learned counsel for the official respondent except saying that some little portion was allotted to the unofficial respondent, what exactly the portion of land the appellant is given to the respondent No.4 not uttered a single word and it is nothing else an adamant/arbitrariness of the respondent.

[31] In view of above, the appeals stand allowed with costs of Rs.20,000/- i.e. Rs.10,000/- each to be paid to both the appellants. The judgment dated 20.10.2020 passed in WP(C) No.148 & 149 of 2020 is accordingly, set aside. Consequentially, the appellants are permitted to continue their business in the allotted land and at the same time in the event, in future, the AMC may use the entire property for any public utility but, they cannot apply the method of pick and choose. As a sequel, miscellaneous applications pending, if any, shall stand closed.

B. PALIT, J

T. AMARNATH GOUD, J

A.Ghash

ANJAN
GHOSH

Digitally signed by
ANJAN GHOSH
Date: 2024.03.18
17:28:54 +05'30'