

**HIGH COURT OF TRIPURA
AGARTALA**

W.A. 22 of 2023

Sri Sukumar Paul, son of late Surendra Paul, resident of West Pratapgarh, Kabirajtilla, P.O. A.D. Nagar, P.S. West Agartala, District- West Tripura

.....Appellant

-VERSUS-

1. The State of Tripura, represented by its Secretary, to the Department of Urban, New Secretariat, Kunjaban, District- West Tripura.

2. Municipal Commissioner, Agartala Municipal Corporation, City Centre, Agartala, P.S. West Agartala, District- West Tripura.

3. Assistant Municipal Commissioner, Agartala Municipal Corporation, South Zonal Office, Badharghat, near Agartala Doordarshan Kendra, P.O. A.D. Nagar, District- West Tripura.

4. Sri Gouranga Acharjee, S/o late Suresh Acharjee, resident of West Pratapgarh, Kabirajtilla, P.O. A.D. Nagar, P.S. West Agartala, District- West Tripura

....Respondents

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

For Respondent (s) : Mr. K. De, Addl. GA
Mr. A. Bhaumik, Advocate

Date of hearing & delivery of judgment & order : **14.08.2024**

Whether fit for reporting : **Yes / No**

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

JUDGMENT & ORDER (ORAL)

Heard Mr. Samar Das, learned counsel appearing for the appellant. Also heard Mr. K. De, learned Additional GA appearing for the respondent no. 1 and Mr. A. Bhaumik, learned counsel for the respondents no. 2 and 3.

2. The appellant is the writ petitioner being aggrieved by the impugned Order dated 19.12.2022 whereby the learned writ Court refused to get into the disputed questions under Article 226 of the Constitution of India and held that the matter needs to be adjudicated by the Civil Court. The writ petition was dismissed by giving liberty to the petitioner. Essentially the dispute is between the petitioner

and the respondent no. 4 against whom the petitioner has alleged that he constructed a building adjacent to the boundary of the petitioner without maintaining minimum space as per the Building Rules. Thereafter, the petitioner requested the respondent no. 4 to maintain the minimum space as per the Building rules but, the respondent no. 4 never paid any heed to that and continued with the construction violating the provisions of law.

3. Learned Counsel for the petitioner has also drawn attention of this court to the Order of the Assistant Municipal Commissioner, South Zone, dated 27.02.2020 whereby respondent No. 4 was directed to remove the construction from the boundary line and construct his room keeping side space as per Rules 3 ft. 3 inch within one month. Thereafter, notices have also issued upon respondent no. 4 such as, notice dated 06.05.2020 (page 36), and then notice dated 19.06.2022 (page 36). It is submitted that the Corporation has not enforced its own order. Therefore, the petitioner was compelled to approach this court for relief. However, learned writ court without appreciating the issue in proper perspective has dismissed the writ petition relegating the petitioner to the court of Civil jurisdiction with an observation that it involves disputed questions of fact. Therefore, the appeal may be allowed and the Corporation may be directed to remove the unauthorized construction at the cost of the respondent no. 4

4. Learned counsel for the respondents no. 2 and 3 has submitted that after the issuance of the demolition order dated 03.03.2021, the petitioner has entered into a settlement with the respondent no. 4. Therefore, the respondent-Corporation with their counter affidavit before the writ court had taken a stand that since the petitioner and respondent no. 4 are in a settlement, the dispute is *inter se* between them and the right, if any, claimed by the petitioner has been waived. Whether the contention of the petitioner that the settlement is a forged

one or not is something which cannot be gone into writ jurisdiction of this court. Therefore, learned writ court has rightly refused to grant relief.

5. On consideration of rival submissions of the parties and upon taking note of the relevant facts from the record, we are in agreement with the observations of the learned writ court that the issue has now gone into an arena of questions of fact, since the petitioner and respondent no. 4 appeared to have entered into a settlement, the authenticity and veracity of which is being disputed by the petitioner at this stage. The respondent-Corporation is also not in a position to enforce its order since the very grievance raised by the petitioner relating to unauthorized construction seems to have been waived by entering into a settlement with the respondent no. 4.

6. As such, in such state of disputed questions of fact and that too in respect of authenticity of the settlement entered into between the private parties, the writ court has rightly refused to interfere in exercise of Article 226 of the Constitution of India. We, therefore, do not find any error in the impugned judgment.

The writ appeal is accordingly dismissed.

(ARINDAM LODH),J

(APARESH KUMAR SINGH), CJ

SAIKAT KAR

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