

**HIGH COURT OF TRIPURA
AGARTALA**

W.A. 36 of 2023

Gouri Shil (Dey), daughter of late Mukunda Lal Shil, wife of Sri Asit Baran De, resident of Ward No. 7, Sabroom Nagar Panchayat, Kamalarjote, P.O. & P.S. Sabroom, District- South Tripura, Pin-799145

.....Appellant

-VERSUS-

- 1. The State of Tripura**, represented by its Commissioner & Secretary, to the Revenue Department, Government of Tripura, New Secretariat Complex, Gurkhabasti, Agartala, P.O. Kunjaban, P.S. New Capital Complex, Sub-Division- Sadar, District- West Tripura.
- 2. The District Magistrate & Collector**, South Tripura District, Belonia, District- South Tripura, Pin-799155.
- 3. The Sub-Divisional Magistrate**, Sabroom Sub-Division, District- South Tripura, Pin-799155.
- 4. The Deputy Collector & Magistrate**, Sabroom Sub-Division, District- South Tripura, Pin-799155.
- 5. The Executive Officer**, Sabroom Nagar Panchayat, District- South Tripura, Pin-799155.

... Official Respondents

- 6. Smt. Uma Shil**, daughter of late Mukunda Lal Shil, wife of Sri Chittaranjan Shil, resident of Ward No. 7, Sabroom Nagar Panchayat, near Sabroom Sub Divisional Hospital, P.O. & P.S. Sabroom, District- South Tripura, Pin-799145

....Respondents

For Appellant (s)	:	Mr. P. Roy Barman, Sr. Advocate Mr. K. Chakraborty, Advocate
For Respondent (s)	:	Mr. M. Debbarma, Addl. GA Mr. Ratan Datta, 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)

I.A. 1/2023

Upon hearing learned counsel appearing for the parties and upon consideration of the explanation delay of 86 days in preferring the instant Memo of Appeal is condoned.

I.A. stands disposed of.

W.A. 36 of 2023

Heard Mr. P. Roy Barman, learned senior counsel assisted by Mr. K. Chakraborty, learned counsel appearing for the appellant. Also heard Mr. M. Debbarma, learned Additional GA appearing for respondents no. 1 to 5 and Mr. Ratan Datta, learned counsel for respondent no. 6.

2. The petitioner had invoked the writ jurisdiction with the following prayers:

- “ i. Issue rule calling upon the respondents and each one of them, to show cause as to why a writ of mandamus and/or in the nature thereof, shall not be issued, mandating/directing them to act in terms of the order dated 30.04.2013 and 27.06.2013 and the order of cancellation of building permit dated 27.12.2018 (Annexures-6, 8 & 10 respectively supra), and in terms of the statutory prescriptions, contained in Rule-31 of the Tripura Building Rules, 2017 and Section-20 of the Tripura Land Revenue & Land Reforms Act, 1960.*
- ii. Issue rule calling upon the respondents and each one of them, to show cause as to why a writ of mandamus and/or in the nature thereof, shall not be issued, mandating/directing them to demolish the illegally constructed building of the Private respondent, situated in the jointly owned land property of the legal heirs of Late Mukunda Lal Shil (including the petitioner) at plot No.4051, Khatian No.451 (Annexure-1 supra), and to restore the said plot of land to its actual class of land, i.e. pukur.*
- iii. Call for the records, appertaining to this writ petition.*
- iv. After hearing the parties, be pleased to make the rule absolute in terms of (i) & (ii) above.*
- v. Costs of and incidental to this proceeding.”*

3. The relevant bundle of facts on which the instant cause of action has been raised are referred to in the impugned judgment. Briefly stated, it is the case of the petitioner that some construction had been made by the private respondent after obtaining a building permission on the plot no. 4050, but proceeded to construct the building on plot no. 4051 without obtaining any permission for diversion of the land. He has referred to the Orders dated 30.04.2013 and 27.06.2013 whereby penalty was imposed upon the private respondent and a direction was issued to remove the earth filling therefrom. Since such conditions have been violated, by order dated 27.12.2018, the building permission was cancelled, but since no action of demolition was taken either by the official

respondents or by the private respondent, the petitioner after submitting legal notices on 14.03.2022 upon all the respondents approached the writ court.

4. The learned writ court after consideration of the case of the petitioner and the pleadings on record had observed that the writ petition suffered on the ground of laches. The learned writ court also was of the view that certain disputes between the petitioner and private respondent exist which should not be gone into writ jurisdiction. Being aggrieved, the writ petitioner is before this court in appeal.

5. Reference is straightway made to the Order dated 27.12.2018 which is at Annexure 10, issued by the Executive Officer, Sabroom Nagar Panchayat, Sabroom, South Tripura, respondent no. 5. It relates to cancellation of the building permission of the private respondent. The same is extracted hereunder:

**“OFFICE OF THE
SABROOM NAGAR PANCHAYAT
SABROOM, SOUTH TRIPURA**

NO.F.1(312)SBM/NP/2015/3366-67

Date: 27.12.2018

CANCELLATION OF BUILDING PERMIT

Whereas, a notice vide No. No.F.1(312)SBM/NP/2015/513-15 dated 16.03.2018 was issued to Smt. Uma Shil W/O Chitta Ranjan Shil, wrad No. 7, Sabroom Nagar Panchayat, South Tripura, show the cause why her building permit will not be cancelled as per provision under section 21 of Tripura Building Rules, 2017 for submission of fraudulent statement in connection with land. But the reply of Smt. Uma Shil is not satisfactory of the authority of Sabroom Nagar Panchayat.

And whereas, it has come to the notice of the undersigned as per the report of the Revenue Inspector, KK Chakma that Smt. (Uma Shil constructed building house outside of plot No. 4050 of khatian No. 361 and she has constructed building on the plot No. 4051 of khatian No. 451. As per the terms & conditions written in the Sl. No. 5 of building permit no one can construct building outside of mentioned plot No. in building permit.

Now, therefore, the Building Permit No. 2466 dated 16.10.2012 is hereby cancelled and any work done there under shall be deemed to have been done without sanction.

To

Smt. Uma Shil
W/O Sri Chitta Ranjan Shil
Sabroom Pagar Panchayat Sabroom,
South Tripura

Sd/
Executive Officer
Sabroom Nagar Panchayat
Sabroom, South Tripura

Copy to:

1. The Chairperson, Sabroom Nagar Panchayat for favour of your kind information please.”

6. It appears upon hearing learned counsel appearing for the parties and going through the records that no specific action had been taken in pursuance of the instant order dated 27.12.2018 either by the respondent 5 or by the respondent no. 6 i.e the private respondent.

7. Whether *inter se* disputes exist between the petitioner and the private respondent or not and whether the order has been carried out by removal of the unauthorized construction by the private respondent is a domain which has to be examined, inquired and acted upon by the statutory authority under the Tripura Building Rules, 2017, i.e. the respondent no. 5.

8. As such, this court is of the considered view that the respondent no. 5 will take cognizance of its own order and after giving at least one opportunity to both the petitioner and the private respondent take a decision on the question of removal of the unauthorized construction in accordance with law within a stipulated period of time. In case the respondent 5 is of the view that the issues involve questions of fact as to the boundaries of the concerned plot nos. 4050 and 4051 agitated between the parties, it would be open for the respondent no. 4 to relegate the parties to competent court of civil jurisdiction. If the respondent no. 5 finds that the issue also involves diversion of land by any of the parties and that proceedings are underway before the respondent no. 3, the Sub Divisional Magistrate, the respondent no. 5 may relegate the parties for consideration on that issue before the concerned SDM, Sabroom.

The writ appeal is accordingly disposed of with the aforesaid observations.

(ARINDAM LODH),J

(APARESH KUMAR SINGH), CJ

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