

Case No :WP(C) 0000095/2015

Party Name : M/S ROSE VALLEY REAL ESTATE & CONST. Vs THE STATE OF TRIPURA &
ORS

THE HONBLE MR. JUSTICE S.C.DAS

By filing this writ petition under Article 226 of the Constitution of India, the petitioner prayed for the following reliefs:-

- "I) **ISSUE RULE**, calling upon the respondents and each one of them to show cause as to why a Writ of Certiorari and/or in the nature there-of, shall not be issued, for quashing/setting aside the impugned notice vide No.F.52/HC/AMC/06(P)/912-916 dated 29.12.2014 (Annexure-7), impugned notice vide No.F.52/HC/AMC/06(P)/1624-27 dated 09.02.2015 (Annexure-9) and the impugned notice vide No.F.52/HC/AMC/06(P)/1307-1317 dated 13.03.2015(Annexure-10) passed by the Municipal Commissioner, Agartala Municipal Corporation, Respondent No.4.
- II) **ISSUE RULE**, calling upon the respondents and each one of them, to show cause as to why Writ of Mandamus and/or in the nature, shall not be issued, for mandating/directing the respondents, for recalling/revoking and/or not to give effect to the impugned notice vide No.F.52/HC/AMC/06(P)/912-916 dated 29.12.2014, impugned notice vide No.F.52/HC/AMC/06(P)/1624-27 dated 09.02.2015 and the impugned notice vide No.F.52/HC/AMC/06(P)/1307-1317 dated 13.03.2015 passed by the Municipal Commissioner, Agartala Municipal Corporation, Respondent No.4.
- III) **CALL FOR THE RECORDS** appertaining to this petition;
- IV) **COSTS** of and incidental to this proceeding;
- V) **Any other RELIEF(S)** as to this Hon'ble High Court may deem fit and proper:
- AND
- In the interim be pleased to stay effect and operation of the said impugned notices and orders in Annexure 7, 9 and 10 till disposal of the writ petition."

Copies of the writ petition served on learned Govt. Advocate who waived service of notice on behalf of respondent Nos. 1 and 2. Similarly, learned counsel Mr. K.K. Pal also waived service of notice on behalf of respondent Nos. 3 and 4 by receiving copy of the petition. Heard learned Sr. counsel Mr. A.K.Bhowmik for the petitioner, learned G.A. for the respondent Nos. 1 and 2 and learned counsel Mr. K.K. Pal for the respondent Nos. 3 and 4. Mr. Bhowmik, learned Sr. counsel insisted acceptance of the writ petition by issuing notice and also prayed for interim order. Two separate CM applications also filed i.e. CM Application No.91 of 2015 seeking stay of operation of notice dated 29.12.2014 (Annexure-7 to the writ petition), notice dated 09.02.2015 (Annexure-9 to the writ petition) and notice dated 13.03.2015 (Annexure-10 to the writ petition) pending disposal of the writ petition. Another CM application No.92 of 2015 has been filed to direct the respondent-Opposite Parties to restore electric/power connection to the impugned office building of the petitioner pending disposal of the writ petition. The petitioner, *inter alia*, contended that they have constructed a multi storied (G+5) building at Shakuntala Road, Agartala and after construction was over, the respondent-Agartala Municipality since was not issuing occupancy certificate, the petitioner instituted writ petition (C) 465 of 2010 and the said writ petition was disposed of in the Single Bench of the then Gauhati High Court, Agartala Bench (the Bench presided over by myself, Justice S.C.Das) by judgment and order dated 10.09.2012 with the following direction:-

"Under the circumstances, this court is constrained to ask the respondents to issue occupancy certificate to the petitioner within 15 days from today. In the event of failure of the respondents to do so, the petitioner should be presumed to have obtained such certificate and shall be entitled to occupy the building without any hindrance from the part of the respondents.

The petitioner should vacate the govt. khas land if any, whatever may be the area at once.

The State respondents since found to have usurped the authority of the Municipality and since unduly interfered in the matter, is slugged with a cost of Rs.10,000/- to be paid within 45 days to the petitioner."

It is the case of the petitioner that challenging judgment dated 10.09.2012, the State-respondents preferred Writ Appeal No.276 of 2012 in the Division Bench of the then Gauhati High Court at Principal Seat and the Division Bench by order dated 03.10.2012 admitted the appeal and stayed operation of the impugned order passed by the Single Bench and stay order was with the following rider:-

"In the meantime, the appellant/Municipal Corporation may give due opportunity to the writ petitioner to rectify defects in accordance with law, without prejudice to the rights and contentions of the parties in the appeal and if all the objections are removed, **the requisite occupancy certificate may be issued, subject to further orders in appeal.** If objections still persist and according to the authorities, occupancy certificate is not liable to be issued, the respondent writ petitioner may be informed. Correctness of such view will be open to question.

For final hearing on 03.12.2012."

Now, the petitioner contended that after the aforesaid order was passed the petitioner approached the respondents-Municipality to issue occupancy certificate and the Municipality after being satisfied that there was no defects in the building and/or all defects were rectified, issued occupancy certificate on 09.09.2014 (Annexure-6 to the writ petition). After that occupancy certificate was issued, the petitioner entered in the premises and set up different offices with permanent furniture but thereafter all on a sudden the respondent No.4 issued notice dated 29.12.2014(Annexure-7 to the writ petition) asking the petitioner to vacate the building within 3(three) days. The petitioner made representation dated 01.01.2015 against the said notice dated 29.12.2014(Annexure-8 to the writ petition) and thereafter by issuing notice dated 09.02.2015 (Annexure-9 to the writ petition), respondent No.4 cancelled the occupancy certificate and asked the petitioner to vacate the building within 3(three) days and otherwise the matter will be brought to the notice of the High Court. Thereafter on 13.03.2015 (Annexure-10 to the writ petition) respondent No.4 issued notice that the power line and water line will be disconnected and accordingly the power line has been disconnected in the meantime.

It is submitted by learned Sr. counsel Mr. Bhowmik that the Writ Appeal filed by the State-respondents is still pending since there is no available Division Bench to hear the matter and, therefore, under compelling situation since the fundamental right of the petitioner has been infringed, the present writ petition is filed on fresh cause of action in view of cancellation of the occupancy certificate already issued by the respondent-Municipality. It is contended by Mr. Bhowmik, learned Sr. counsel that once an occupancy certificate is issued, it cannot be cancelled or revoked by the respondent-Municipality. The judgment and order dated 10.09.2012 in WP(C) 465 of 2010, though has been stayed by the Division Bench by order dated 03.10.2012 in Writ Appeal No.276 of 2012, the appellate forum has given a rider to consider issuance of occupancy certificate and accordingly, after considering all aspects, occupancy certificate has been issued since there was no obstruction in issuing the same, while such certificate has already been issued, the respondent cannot cancel or withdraw the same at their own whims to deprive the petitioner from using the building construction by them.

Referring to the contents of the occupancy certificate, Mr. Bhowmik, learned Sr. counsel further argued that though the word 'provisional' has been used but practically there is nothing in law of such provisional occupancy certificate and therefore, it should be read as a permanent occupancy certificate. He has also argued that though there are some terms and conditions mentioned in the occupancy certificate, on those grounds it has not been cancelled rather it has been cancelled on the whims and caprice of the respondents and therefore, the right of the petitioner should be protected by an interim order.

On the contrary, learned counsel Mr. Pal and learned G.A. argued that the judgment and order dated 10.09.2012 passed in WP(C) No.465 of 2010 has been stayed by the appellate forum and a rider has been given to consider issuance of occupancy certificate if the writ petitioner rectified the defects in accordance with law. It is the contention of the respondents that the provisional certificate was issued but the defects have not been rectified since it is mentioned in the provisional certificate that the occupancy certificate shall be subject to cancellation at any moment for non compliance of any of the items reported in the site inspection report is not complied with. According to the learned counsel, the matter of issuance of occupancy certificate pending disposal of the writ appeal is subject to further order in the appeal as contemplated in the order dated 03.10.2012 and therefore, a separate writ petition is not maintainable.

The operation of judgment and order dated 10.09.2012 in WP(C) 465 of 2010 has been stayed subject to the rider as stated hereinbefore. It is clearly stated in the impugned order dated 03.10.2012 that the appellant-Municipal Corporation may give due opportunity to the writ petitioner to rectify defects in accordance with law without prejudice to the rights and contentions of the parties in the appeal and if all the objections are removed, **the requisite occupancy certificate may be issued, subject to further orders in appeal** (emphasis supplied)

The order clearly contemplates that even if a occupancy certificate is issued it shall be subject to further order in the appeal and the occupancy certificate will be issued only if the appellant/Municipal Corporation is satisfied that all defects in accordance with law were rectified.

The contents of the occupancy certificate dated 09.09.2014 (Annexure-6 to the writ petition) reads as follows:-

"..... Subject: **Grant of Provisional Occupancy Certificate under sub-rule (2) of rule 34.**

Building Particulars: Commercial Building
Premises No and Street: Shakuntala Road,
Agartala, Ward No.21.

Sir,

With reference to your notice of completion dated 06.09.2014 I hereby certify that the building as per description below on Shakuntala Road, Agartala under Ward No.21 in respect of which field inspection were done on 23/07/2014, 08/09/2019 and 09/09/2014 with reference to the provision of the Building Rules, under Tripura Municipal Act,1994 and:

1. Is certified to be fit for electric and water supply connection.
2. This Occupancy Certificate shall be treated as purely provisional and subject to cancellation at any moment if non-compliance of any of the items as reported in the site inspection report is not complied with.
3. The certificate does not confirm any right for regularization of the unauthorized building.
4. This certificate is specially issued subject to the final approval of UD Department, Govt. of Tripura.
5. Any fee/inequity or other charges that UD/AMC or any Govt. agency imposes has to be submitted by the owners of the building"

A reading of the occupancy certificate clearly reveals that it was subject to certain terms and conditions and was issued provisionally. I cannot agree with the submission of learned Sr. counsel, Mr. Bhowmik that occupancy certificate cannot be issued provisionally and it should be read as a occupancy certificate issued permanently as per Rule 34 of the Tripura Building Rules,2004. Once, the occupancy certificate was subject to certain conditions, the Municipality cannot be said to have no jurisdiction to withdraw the occupancy certificate.

Be that as it may, the question is whether this Court sitting in the Single Bench shall now entertain this writ petition or not and whether the cause of action which has been stated in the writ petition are the new cause of action or the continuance of the cause of action for which the appeal is pending. The interim order passed by the Division Bench in the Writ Appeal makes it abundantly clear that in case an occupancy certificate is issued that shall be subject to the further order in the appeal and while being so, for issuance of an occupancy certificate pursuant to that order or for cancellation of such occupancy certificate, the parties must approach the appellate forum and the Single Bench of this Court shall not entertain a separate writ petition on that issue which in my considered opinion will be violative of the judicial discipline.

I, therefore, find no fresh cause of action for entertaining the present writ petition and consequently, I also find no justification to pass any interim order as prayed by the petitioner.

The petitioner in view of the pendency of the writ appeal may approach appropriate forum for the reliefs sought in this writ petition. Since there is no fresh cause of action to entertain fresh writ petition on the issue, the writ petition stands dismissed at the motion stage itself.