

THE HIGH COURT OF TRIPURA
AGARTALA

W.P.(C) 511 of 2014

1. **Sri Krishna Saha,**
S/O Late Gopal Chandra Saha,
resident of Kumaritilla, P.O. Kunjaban,
P.S. East Agartala, District- West Tripura.
2. **Sri Samir Chandra Naha,**
S/O Chandra Mohan Naha,
resident of Kumaritilla, P.O. Kunjaban,
P.S. East Agartala, District- West Tripura.
3. **Sri Satyajit Naha,**
S/O Chandra Mohan Naha,
resident of Kumaritilla, P.O. Kunjaban,
P.S. East Agartala, District- West Tripura.
4. **Smt. Nihar Bala Modak,**
D/O Late Sudhir Ranjan Modak,
resident of Kumaritilla, P.O. Kunjaban,
P.S. East Agartala, District- West Tripura.
5. **Sri Gopal Modak,**
S/O Late Sukumar Modak,
resident of Kumaritilla, P.O. Kunjaban,
P.S. East Agartala, District- West Tripura.

... **Petitioners**

- **Versus** -

1. **The State of Tripura**
represented by Secretary cum Commissioner,
to the department of Revenue,
Government of Tripura, P.O. Kunjaban,
P.S. New Capital Complex, District- West Tripura.
2. **The Agartala Municipal Corporation**
represented by its Chief Executive Officer,
P.O. Agartala, P.S. West Agartala,
District- West Tripura.
3. **The Chief Executive Officer,**
Agartala Municipal Corporation,
P.O. Agartala, P.S. West Agartala,
District- West Tripura.
4. **The Executive Officer,** North Zone,
Agartala Municipal Corporation,
P.O. Agartala, P.S. West Agartala,
District- West Tripura.

... **Respondents**

**BEFORE
THE HON'BLE MR. JUSTICE U.B.SAHA
THE HON'BLE MR. JUSTICE S. TALAPATRA**

For the petitioners : Mr. A. Bhowmik, Advocate.

For the State respondent : Mr. TD Majumder, learned counsel
Ms. AS Lodh, Addl. GA

For respondent AMC : Mr. KK Pal, Advocate

Date of hearing & delivery
of Judgment and Order : 04.03.2015

Whether fit for reporting : NO

JUDGEMENT AND ORDER (ORAL)

(S Talapatra, J)

Heard Mr. A. Bhowmik, learned counsel appearing for the petitioners as well as Mr. TD Majumder, learned counsel appearing for the Agartala Municipal Corporation and its officers, respondent nos. 2,3 and 4 and Ms. AS Lodh, learned Additional Government Advocate appearing for the State of Tripura.

2. This writ petition has been filed challenging the legality of the notice dated 06.12.2014 (Annexure P8 collectively). The said notice has been issued in terms of the order passed by this Court on 27.11.2014 delivered in WP(C) (PIL) 15 of 2014. For purpose of reference, the said order dated 27.11.2014 as delivered in WP(C)(PIL) 15 of 2014 is reproduced hereinafter:

"This petition has been filed in the public interest. The petitioners by means of this petition have alleged that the 'Kumari tilla lake' has been dried up and various persons have encroached upon the land which was part of the water body. It is the grievance of the petitioners that neither the Municipal Corporation nor the State has taken any steps to evict the persons who have encroached upon the land or to restore the water body. The respondent no.5 i.e. the State Pollution Control Board has fully supported the case of the petitioners. The Director, Urban Development Department in his reply has also admitted that there are encroachments but has stated that the process of removing the encroachers has been

started. The importance of water bodies in any area especially in a State like Tripura is very important. In a tropical area like Tripura water bodies are ecologically and economically very important. Water bodies provide food to many people. These water bodies are also the habitation and environment for various types of flora and fauna which will become extinct if we permit water bodies to be encroached upon. Due to the increasing land prices and the fact that value of land in urban areas has increased manifold, this Court has found that a large number of water bodies are being encroached upon, sometimes by the owners themselves who are raising construction on the same. We are, therefore, expanding the scope of the petition not limiting it to Kumaritilla lake but to all the water bodies within the limits of Agartala Municipal Corporation. We may make it clear that at a later stage, if need be, we may pass orders in respect of the entire State of Tripura. Since we have expanded the scope of the writ petition we direct the Chief Executive Officer, Agartala Municipal Corporation, to submit a report within 2(two) weeks from today identifying the number of public water bodies where encroachments have taken place. As far as possible he shall also indicate the names of the persons who have encroached upon the land. He will within 2(two) weeks thereafter submit another report in respect of private water bodies. Even, the use of private water bodies cannot be diverted without permission of the government in terms of the Tripura Land Revenue and Land Reforms Act, 1960. As far as the second report is concerned, the Chief Executive Officer is directed to indicate the names of the persons who are the owners of the land. The second report be submitted on or before 31st December, 2014. We request Sri P Roy Barman and Mr. S Bhattacharji, learned counsel to assist us as amicus curiae for the entire matter. As far as Kumaritilla lake is concerned, since proceedings have already been initiated by the Agartala Municipal Corporation as well as the State Government for evicting the encroachers we do not want to interfere in the quasijudicial proceedings so as to affect the rights of any party. However, we make it clear that whoever be the authority which is conducting these proceedings shall ensure that all the proceedings are completed latest by 31st January, 2015. List the matter on 11th December, 2014 only for the purpose of filing first report when we shall also fix the next date. Copy of this order be supplied to the learned counsel of both the parties."

[Emphasis added]

3. The operative part of this order which occasioned issuance of the notice under challenge clearly stipulates that as far

Kumaritilla lake is concerned since proceedings have already been initiated for evicting the encroachers this Court declines to interfere in the *quasi judicial* proceedings so as to affect the rights of any party. However, it has been made clear that whoever be the authority which is conducting these proceedings shall ensure that all the proceedings are completed latest by 31st January, 2015.

4. In pursuance to that order, the impugned order has admittedly been issued by the Agartala Municipal Corporation. It is also not in dispute that a separate set of persons filed the writ petition being WP(C) 504 of 2014 demonstrating their grievance that even though some of them are living on their own jote land, they have been served with the notice of eviction along with others. The said writ petition being WP(C) 504 of 2014 was disposed of by the order dated 16.12.2014, which is extracted here-in-under:

“ Heard Mr. A. Bhowmik, learned counsel appearing for the petitioners as well as Mr. B.C. Das, learned Advocate General assisted by Mrs. A. S. Lodh, Addl. G.A. appearing for the State of Tripura respondent No.1. Also heard Mr. K.K. Pal, learned counsel appearing for the Agartala Municipal Corporation respondent Nos. 2 to 4.

The conspectus of the grievances as enumerated in the writ petition is that in terms of the order dated 27.11.2014 delivered in W.P(C)(PIL) 15 of 2014, the Agartala Municipal Corporation has started taking steps for evicting the squatters and other persons who are living or in illegal use of water bodies and adjoining land causing the water bodies ecologically vulnerable.

The order dated 27.11.2014 for the purpose of reference is extracted hereunder:

“ This petition has been filed in the public interest. The petitioners by means of this petition have alleged that the ‘Kumaritilla lake’ has been dried up and various persons have encroached upon the land which was part of the water body. It is the grievance of the petitioners that neither the Municipal Corporation nor the State has taken any steps to evict the persons who have encroached upon the land or to restore the water body. The respondent no.5 i.e. the State Pollution Control

Board has fully supported the case of the petitioners. The Director, Urban Development Department in his reply has also admitted that there are encroachments but has stated that the process of removing the encroachers has been started. The importance of water bodies in any area especially in a State like Tripura is very important. In a tropical area like Tripura water bodies are ecologically and economically very important. Water bodies provide food to many people. These water bodies are also the habitation and environment for various types of flora and fauna which will become extinct if we permit water bodies to be encroached upon. Due to the increasing land prices and the fact that value of land in urban areas has increased manifold, this Court has found that a large number of water bodies are being encroached upon, sometimes by the owners themselves who are raising construction on the same. We are, therefore, expanding the scope of the petition not limiting it to Kumaritilla lake but to all the water bodies within the limits of Agartala Municipal Corporation. We may make it clear that at a later stage, if need be, we may pass orders in respect of the entire State of Tripura. Since we have expanded the scope of the writ petition we direct the Chief Executive Officer, Agartala Municipal Corporation, to submit a report within 2(two) weeks from today identifying the number of public water bodies where encroachments have taken place. As far as possible he shall also indicate the names of the persons who have encroached upon the land. He will within 2(two) weeks thereafter submit another report in respect of private water bodies. Even, the use of private water bodies cannot be diverted without permission of the government in terms of the Tripura Land Revenue and Land Reforms Act, 1960. As far as the second report is concerned, the Chief Executive Officer is directed to indicate the names of the persons who are the owners of the land. The second report be submitted on or before 31st December, 2014. We request Sri P Roy Barman and Mr. S Bhattacharji, learned counsel to assist us as amicus curiae for the entire matter. As far as Kumaritilla lake is concerned, since proceedings have already been initiated by the Agartala Municipal Corporation as well as the State Government for evicting the encroachers we do not want to interfere in the quasijudicial proceedings so as to affect the rights of any party. However, we make it clear that whoever be the authority which is conducting these proceedings shall ensure that all the proceedings are completed latest by 31st January, 2015. List the matter on 11th December, 2014 only for the purpose of filing

first report when we shall also fix the next date. Copy of this order be supplied to the learned counsel of both the parties.”

Mr. Bhowmik, learned counsel appearing for the petitioners has at the outset submitted that Agartala Municipal Corporation has “misinterpreted” the said order of the Hon’ble High Court and issued eviction notices straightway without following the principle of natural justice meaning in violation of audi alteram partem inasmuch as, according to Mr. Bhowmik, learned counsel for the petitioners, the petitioners were not given opportunities for submitting their documents in support of their claims relating to the land adjoining to the water bodies.

Mr. Bhowmik, learned counsel appearing for the petitioners has further contended that some of the petitioners, such as the petitioner Nos. 1, 2 and 7 have got the valid registered sale deeds in support of their title over the land from where they have been asked to vacate and they are in possession of the land as described in those sale deeds. Sale deeds are part of this writ petition. The petitioner Nos. 3, 5 and 6 are in possession of the land and for their long possession, even the Revenue officer has proposed to make allotment of the land in their favour. The petitioner No. 7 is, however, not a noticee and there is no averment as to the grievance of the petitioner No. 7 in the entire writ petition.

From the other side, Mr. A Chandra, the Municipal Commissioner appearing in person, has produced the records before us showing that notices were issued to the persons whom they proposed to evict from the land as they illegally encroached the land recorded as the Government khas land or Municipal land. Mr. Chandra in an unambiguous term submits before this court that the owners of the jote land will not be evicted from the land.

Be that as it may, as we find from the rival contentions that it is still to be decided who are the owners of the jote lands and who are squatting illegally over the land either belonging to the State or to the Municipal Corporation. Even though as we have noticed in the records that some opportunities were provided to some of the petitioners, we find that opportunity was not adequate enough for them to make their submission supported by relevant and necessary documents in respect of their claims on the land adjoining to the water bodies in question.

Having held so, we direct the Executive Officer, North Zone of Agartala Municipal Corporation to hear the petitioner Nos. 1,2,3,5 and 6 on 21.1.2015 and pass the reasoned order on that day itself so that the appropriate and required action can be taken without further delay. Meanwhile, the petitioners shall invariably file all necessary documents so that hearing can take place on 21.1.2015. It is made clear that if such claim is not submitted by the petitioners as stated with necessary

and relevant documents within the stipulated period, the Executive Officer, Agartala Municipal Corporation, North Zone shall be at liberty to pass the order as asked for on the basis of the record available before him.

Meanwhile, status quo as on today in respect of petitioner No. 1,2,3,5 and 6 shall be maintained by the Agartala Municipal Corporation.

This court does not propose to exercise its plenary jurisdiction to adjudicate the disputed facts relating to the title or possession of the land in the circumstances like this one and as such, we refrain from making any observation on that aspect of the matter.

Hence, this petition stands disposed of and there shall be no order as to the costs”.

[Emphasis added]

5. It is also not disputed that the Agartala Municipal Corporation has complied direction and issued notice on all the persons who were allegedly encroaching upon the Kumaritilla lake and other allied land for purpose of enabling them to produce the documents relating to the title and other claims. Thereafter, the authorized officer of the Agartala Municipal Corporation has passed the order dated 27.12.2014. The said order dated 27.12.2014 is extracted and the identical orders have been passed in respect of other petitioners. It also appears from the record that the said order dated 27.12.2014 has not been challenged in this proceeding despite the fact that it has been placed on the records.

6. We do not propose to examine the merit of that order as that is not under challenge before us but most important and inescapable facet of this case is that after approaching this court by filing the petition under Article 226 of the Constitution of India, all the writ petitioners filed civil suits in the court of the Civil Judge, Junior Division, Agartala, West Tripura. Even though the petitioners have filed such suits in the civil court, at no point of time, that fact has

been disclosed by them neither have they filed the copies of the plaint nor any order delivered by the Civil Judge, Junior Division, Agartala, West Tripura. However, the respondent nos. 2, 3 and 4 by an additional counter affidavit have produced the plaint of Title Suit no. 06 of 2015 on contending that exactly the similar plaints are presented in the court of the Civil Judge, Junior Division, Agartala, West Tripura. Along with the suit, a petition under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure has also been filed by the petitioners urging the Civil Judge for passing a temporary injunction on the following terms:

“Under the circumstances stated above it is most humbly prayed that your honour would be kind enough to consider the prayer of the plaintiff petitioner and would very kindly pass an order of temporary injunction restraining the defendant Ops and their persons and agents from disturbing the peaceful possession of the plaintiff petitioner on the suit land and from giving effect of the notices and the order dated 06.12.2014, 23.12.2014 and 26.12.2014 till disposal of the present suit and considering the urgency your honour would be kind to pass an ad interim or of injunction so restraining the defendant OPs”.

7. It appears further that some orders giving finality of the proceeding by the Agartala Municipal Corporation have also been passed on 26.12.2014.

8. Mr. Bhowmik, learned counsel appearing for the petitioners has submitted that the Agartala Municipal Corporation does not have any authority to ask for eviction from the land where the petitioners are now in possession. To substantiate such submission, Mr. Bhowmik has taken us to the provisions of Section 91 of the Tripura Municipal Act, 1994 which provides as under:

“91. Notwithstanding anything contained in any other law for the time being in force, the moveable and immoveable

properties of the following categories within the limits of a Municipal area shall vest in the Municipality, unless the State Government otherwise directs by a notification in the official Gazette:

- (a) all public lands not belonging to Central or State Government Department or statutory body;
- (b) all public tanks, streams, reservoirs and wells;
- (c) all public markets and slaughter houses;
- (d) all public sewers, drains, channels tunnels, culverts and water courses in, alongside, or under any street;
- (e) all public streets and pavements, bus, taxi or rickshaw stands or other parking or transportation terminals, stones and other materials thereof, and also trees on such public streets or pavements not belonging to any private individuals;
- (f) all public parks and gardens, including squares and public open spaces;
- (g) all public ghats on rivers or streams or tanks;
- (h) all public lamps, lampposts and apparatus connected therewith, or appertaining thereto;
- (i) all public places for disposal of the dead excluding those governed by any specific law in this behalf;
- (j) all solid and liquid wastes collected on a public streets or public place, including dead animals and birds;
- (k) all stray animals not belonging to any private persons;

Provided that the State Government may by notification withdraw any public street, square, park, garden or transportation terminal and transfer to an agency for a limited period for development and maintenance in the public interest”.

According to Mr. Bhowmik, by filing the counter affidavit, the respondent no.2, 3 and 4 have categorically admitted that the petitioner nos.1,2 and 3 are possessing the khas land. All khas lands do not come under the provisions of Section 91 of the Agartala Municipal Corporation except those lands which are categorically catalogued under that section. Only those lands stand vested automatically by operation of provisions of Section 91 of the Tripura Municipal Act, 1994 to the Municipal bodies. Having said so, Mr. Bhowmik, has further referred to some ‘illegality’. According to him, the petitioner no. 4 and 5 are the permissive possessors of some

land owned by one jotedar and living there by constructing respective huts and buildings. They have also been given notice for removing encroachment. Mr. Bhowmik, taking us to the counter affidavit filed by respondent no. 2,3 and 4 has pointed out to the paragraph 11,12,13 and 14, which according to Mr. Bhowmik constitute admission by the respondents no. 2, 3 and 4. Paragraph 11,12,13 and 14 of the counter affidavit filed by the respondent no.2,3 and 4 filed on 22.04.2015, read as follows:

“11. Regarding para 7 of the petition I humbly submit that as per demarcation report keeping in view of record of rights Smt. Nihar Bala Modak i.e. petitioner no.4 was residing on the land of one Hara kumar Debnath and had constructed a dwelling house on the said land illegally. Construction of building without approval of Agartala Municipal Authority will amount to violation of Agartala Municipal Act, 1994. The notice as was issued to the petitioner cannot confer any right upon her to claim immunity from eviction from the land in question. Admittedly the petitioner no. 4 is illegally occupying R.S. Plot no. 3060 under Khatian no. 1/127. Following the order of the Hon’ble High Court dated 22.01.2015 in WP(C) 511 of 2014 she was not evicted.

12. Regarding para 8 of the petition I humbly submit that the petitioner no.4 has been possessing the land of one Hara Kumar Debnath and constructed the building without approval of the Agartala Municipal Corporation. Therefore, it entails proceedings under the Tripura Municipal Act, 1994 and the Tripura Building Rules, 2004.

13. Regarding para 9 of the petition I humbly submit that issuance of notice bearing no. 437 dated 27.11.1996 cannot confer right upon the petitioner to claim immunity from being evicted from the land in question. Revenue Records do not stand in the name of the petitioner no.5.

14. Regarding para 10 of the petition I humbly submit that petitioner no.5 constructed dwelling house without obtaining permission from Agartala Municipal Corporation as such construction of house is violation of Agartala Municipal Act, 1994.”

Mr. Bhowmik, has finally submitted that under Section 107 of Agartala Municipal Corporation has the authority only to remove the

encroachment and they have no authority to evict someone from the possession over any land.

9. On a question from this Court Mr. Bhowmik has submitted that since the challenge is limited to the legality of the impugned notice, the petitioner may not be treated for simultaneously approaching two different fora on the same cause of action.

10. In this regard, Mr. Bhowmik has submitted that the petitioners are remediless so far the issuance of the notice dated 26.12.2014 (Annexure P8 collectively) are concerned, as those notices have been issued without any authority of law and without jurisdiction as such.

11. From the other side, Mr. Majumder, learned counsel appearing for Agartala Municipal Corporation has submitted that in terms of the order dated 16.12.2014 passed in WP(C) 504 of 2014 all the encroachers including the petitioners were issued notice to submit their records or any other material to support their case that either they are having the title or right on the land from where the encroachment are to be removed.

12. The petitioners herein, even though appeared before the concerned authority, the Executive Officer, North Zone, Agartala Municipal Corporation, they prayed for three weeks time without submitting any document. Having regard to the order passed by this Court in WP(C) (PIL) 15 of 2014, the said Officer did not allow such time and passed the orders dated 26.12.2014 and 27.12.2014.

13. Mr. Datta Majumder has categorically submitted that the order dated 27.12.2014 has not been challenged though it is the final order on culmination of the proceeding which was taken up in terms of the order dated 16.12.2014. If that order is not challenged, the writ petition cannot be maintained. Mr. Dutta Majumder, has further submitted that in the order dated 27.12.2014 it has been categorically observed that the petitioners were illegally occupying the government khas land and they were asked to remove their dwelling huts etc. by 10.01.2015 for construction of the public drain etc. and for development of the Kumaritilla lake. That finding is not under challenge. Agartala Municipal Corporation is within its jurisdiction to direct any person, illegally encroaching on the land as covered under Section 107 of the Tripura Municipal Act, 1994 for removing illegal structure and for that no notice even is required to be issued.

14. Having regard to the contentions raised by the learned counsel for the respective parties, this Court is of the considered opinion that whether the suit land is covered under Section 91 of the Tripura Municipal Act, 1994, is a dispute which requires to be determined on recording evidence inasmuch as Section 91 of the Tripura Municipal Act, 1994 provides that all public sewers, drains, channels, tunnels, culverts and water courses, in, alongside, or under any street shall vest to the municipal authority. It is not apparent from the averments of the writ petition that whether the land over which the petitioners are claiming purported right is covered by such description or not. However, on the face of the averments made in paragraph 11 and 14 of the counter affidavit filed by the respondents

no.2, 3 and 4 we are of the view that if the constructions carried out in violation of the provisions of Tripura Municipal Act, 1994 may not come under the purview of the direction, as issued in WP(C) (PIL) 15 of 2014.

15. Mr. Datta Majumder has already stated that the Agartala Municipal Corporation will not evict anyone or remove any encroachment from the jote lands if proper documents are filed before them. It is apparent from the documents so filed in the writ petition that the petitioner nos. 4 and 5 have claimed to have occupying land of one Hara kumar Debnath as the permissive possessors.

16. This Court, however, does not propose to examine the correctness of the entry made in Khatian no. 951 of Mouja Kunjaban but prima facie presumption under Section 43(3) of the Tripura Land Revenue and Land Reform Act is irresistible unless those are rebutted. Therefore, it warrants that Agartala Municipal Corporation without scrutinizing that aspect of the matter may not evict or remove any encroachment from those lands in terms of the notice or the order dated 27.12.2014. But if it is found that the petitioner nos. 4 and 5 are encroaching or possessing any land beyond what has been recorded in the khatian no. 959 as referred, they shall not be protected under any circumstances. So far the challenge regarding the validity of the notice is concerned, this Court is of the view that the petitioners may be permitted to pursue their suit for substantiating their claim on title and to achieve other reliefs put forward in the suit.

17. The petitioners may be permitted to amend or add pleadings in their plaint, if permitted by the law. But this Court cannot sit for adjudicating such controversy under Article 226 of the Constitution of India inasmuch as prima facie Agartala Municipal Corporation has got the authority to direct or remove the encroachment under Section 107 of the Tripura Municipal Act, 1994.

18. With this observation, this writ petition stands dismissed.
No order as to costs.

JUDGE

JUDGE

Saikat