

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C)No.138 of 2022

1. Sri Subrata Saha,

2. Sri Sankar Saha,

---- **Petitioner(s)**

-VERSUS-

1. The Municipal Commissioner,
Agartala Municipal Corporation, Agartala,
West Tripura

2. The Assistant Municipal Commissioner,
East Zone, Agartala Municipal Corporation,
Agartala, West Tripura

3. Sri Sambunath Saha,

---- **Respondent(s)**

For Petitioner(s)	:	Mr. Somik Deb, Sr. Advocate Ms. R. Chakraborty, Adv.
For Respondent(s)	:	Mr. A. Bhowmik, Adv. Mr. P. K. Biswas, Sr. Adv. Mr. S. Bhattacharjee, Adv.
Date of hearing	:	28.06.2022
Date of delivery of Judgment & order	:	30.06.2022
Whether fit for reporting	:	YES/NO

HON'BLE MR. JUSTICE T. AMARNATH GOUD

Judgment & Order

Heard Mr. Somik Deb, learned senior counsel assisted by Ms. R. Chakraborty, learned counsel appearing for the petitioners and also heard Mr. A. Bhowmik, learned counsel appearing for the respondents No.1 & 2 and Mr. P. K. Biswas, learned senior counsel along with Mr. S. Bhattacharjee, learned counsel appearing for the respondent No.3

02. The case of the petitioner is that he is the permanent resident of Banamalipur, Agartala. The father of the respondent No.3 had constructed the said building as per the approved plan in the year 1983. Later on, new construction was taken up by the respondent No.3 in terms of the approved plan dated 30.04.2016. The petitioner has contended that there is serious deviation in construction from the approved plan issued by Agartala Municipal Corporation (AMC) and the petitioner is interested to get the property of the unofficial respondent demolished.

03. There were two rounds of litigations between the parties before this court being WP(C) 371/2018 disposed of vide order dated 27.11.2018 and WP(C) 196/2019 disposed of vide order dated 20.06.2019. In pursuance of the said litigations, the respondents AMC also issued the order of demolition but the respondent No.3 has not demolished the unauthorized construction. Since the respondents AMC is not taking any action on the respondent No.3 and not implementing the Court orders, the present writ petition has been filed.

04. The case of the AMC is that there are deviations made by the unofficial respondent and they have initiated steps for removing the unauthorized deviations and also issued a notice. The unofficial respondent has also filed an application seeking for regularization under the Municipal Rules by compounding. The same is pending for consideration.

05. The case of the respondent No.3 herein is that the petitioner herein does not have the locus standi to the litigation and has been filing complaints against the respondent, one after another for reasons, known best to him. More particularly, in the present case the petitioner is not the immediate neighbour and he resides in different premises far away from the property in question. None of his legitimate rights are affected. This is an ill motive litigation by the petitioner against the respondent.

06. The petitioner has filed complaints before the Municipal Corporation and pressurized them to demolish the house of the respondent No.3 and AMC has initiated the action against the unofficial respondents which has led to the filing of the writ petition before this court to which the petitioner is also a party. The respondents have further contended that the petitioner is not affected in any manner, by the said unauthorized construction which is the subject matter of this writ petition. The petitioner therefore has no locus standi and none of his legitimate rights have been infringed. The respondents have hence, prayed to dismiss the writ petition.

07. After considering the arguments advanced by the petitioner's counsel, this Court is of the opinion that it is purely a private civil dispute between the petitioner and respondent No.3. The petitioner has an effective remedy in approaching the concerned Civil Court by filing a suit seeking relief against unauthorized construction by the unofficial respondent, if there is any, causing hindrance to the petitioner. When there is an effective alternative remedy, the petitioner cannot invoke Article 226 of the Constitution of India. It is not proper to give a finding under Article 226 with regard to the issues whether the petitioner and the unofficial respondent are neighbours, to what extent the right of the petitioner is affected, to what extent the un-official respondent has constructed the property and whether he is having an approved plan or not and what are the deviations. All the above issues are involving the disputed question of facts and the same needs to be demonstrated before the Trial Court.

08. When the petitioner can always agitate his legal rights and seek appropriate relief before the Civil Court, adopting this method of arm twisting against the unofficial respondent by way of filing complaints before the Municipal Corporation and invoking Article 226 of the Constitution of India and seeking mandamus to take action, is abuse of the process of the law. It cannot be said that the petitioner has approached with clean hands. Even the bonafide of the petitioner, as well as the conduct of the un-official respondent No.3, requires legal scrutiny

and the same is not possible under Article 226 of the Constitution of India but it is more effective before the Civil Court.

09. Even according to the petitioners it is argued at one stage contending that they are not the affected party. Their legitimate legal rights have not been infringed. They are not the immediate neighbours of the respondent No.3. The petitioners have not established, by what action of the respondent herein, their rights have been affected or infringed. The petitioners are not affected by the so called deviation or any construction that is made by the unofficial respondent and which is the subject matter of writ petitions.

10. The only case of the petitioners is that since in the earlier orders of this court they are the respondents, they are anxious to get the order complied with. The petitioners have not filed any contempt case, if they believe that the orders of the court have not been complied with. Hence, the petitioner's case is liable to be dismissed for the observation made above.

11. However, since the matter has been heard by this court in earlier round of writ petitions, and having heard Dr. Sailesh Yadav, Municipal Commissioner, who is present in court, this court directs the Municipal Commissioner to look into the matter in its entirety. The building has been constructed after obtaining approval from the Agartala Municipal Corporation in different periods i.e. in the years 1983 and thereafter. There is a change in Agartala Municipal Rules periodically. The Municipal

Commissioner shall consider all these aspects and analyze the permissible deviations. He shall also suggest the unofficial respondent regarding removing the unauthorized construction by causing minimum damage to the property and consider compounding of deviations as per law.

With the above observation this writ petition is dismissed.

JUDGE

