

**IN THE HIGH COURT OF TRIPURA
AGARTALA**

WP(C) 162 of 2009

**Shri Pabitra Deb
S/O Late Prafulla Deb
Of Vill-North Pabiacherra
P.O. & P.S. Kumarghat
North Tripura.**

..... Petitioner

-Versus-

- 1. The State of Tripura
Through the Secretary to the
Government of Tripura,
Revenue Department,
Agartala.**
- 2. The Sub-Divisional Magistrate,
Kailashahar, North Tripura.**
- 3. The Estate Officer
(The Deputy Collector & Magistrate
Kumarghat Revenue Circle,)
Kumarghat, North Tripura.**
- 4. The Tripura Road Transport Corporation
Represented by its Managing Director,
Krishnanagar, Agartala.**

..... Respondents

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

For the petitioner	: Mr. SM Chakraborty, Sr. Advocate. Mr. S Bhattacharjee, Advocate.
For the respondents	: Ms AS Lodh, Addl. GA Mr. P Dutta, Advocate.
Date of hearing and delivery of judgment & Order	: 30.05.2014.
Whether fit for reporting	: Yes/No

JUDGEMENT AND ORDER (ORAL)

The instant writ petition is filed by the petitioner, Sri. Pabitra Deb, for quashing the notice dated 04.06.2009 (Annexure-P/9 to the writ petition), whereby and whereunder he was asked to vacate the

portion of TRTC land encroached by him by constructing Kaccha construction within 11.06.2009 failing which possession would be taken after eviction from the public premises as per section 5(2) of Tripura Public Premises (Eviction Of Unauthorised Occupants) Act, 1982 (**for short, “the TPP Act”**).

2. Heard Mr. SM Chakraborty, learned senior counsel assisted by Mr. S Bhattacharjee, learned counsel for the petitioner as well as Ms AS Lodh, learned Addl. GA for the State respondents and Mr. P Dutta, for the respondent-TRTC.

3. Brief facts needed to be discussed are as follows:-

The petitioner was possessing 0.02 decimals of land of plot No. 220/5338 at Mouza Pabiacherra, Revenue Circle-Kumarghat, North Tripura for the year 1974 where he has constructed one hotel for earning livelihood. In the year 1995 the petitioner applied for allotment of the said land in his name and in the name of his wife jointly. All on a sudden the Tripura Road Transport Corporation (**for short “TRTC”**) gave an objection claiming the said land under the possession of the petitioner. On the basis of the objection, spot enquiry was conducted and in the report of the Revenue Inspector, Kumarghat, North Tripura dated 18.02.1998 it is stated that on verification it has been found that the land in question has been under the possession of the petitioner prior to last settlement and as a proof of that statement Khatian No. 17 of Mouza-Pabiacherra was also enclosed. To ascertain the genuineness of the claim of the TRTC, the then Sub-Divisional Officer, Kailashahar, North Tripura wrote as many as three letters to the Managing Director, TRTC to furnish necessary documentary proof in support of their claim but they failed to furnish any such proof.

Thereafter, when the allotment of land was pending the impugned notice dated 04.06.2009 (Annexure-P/9 to the writ petition) issued by the respondent No. 3 was served upon the petitioner calling upon him to vacate the portion of TRTC land encroached by him illegally within 11.06.2009 failing which possession would be taken after eviction from the public premises as per section 5(2) of the TPP Act.

4. On 10.06.2009, this Court stayed the operation of the impugned notice which was extended from time to time and finally on 31.08.2009 the said interim order was made absolute.

5. The respondent-TRTC by way of filing affidavit-in-opposition stated that allotment order bearing No. F.633 – 34/F/F.2/SDO/KLS/SE-II/78 dated 03.05.1978 has been issued in favour of the General Manager, TRTC, Agartala for land measuring 0.38 acres of Mouza-Pabiacherra for office purposes and the land was handed over to the TRTC authority on 23.05.1978 by the Sub-Divisional Officer, Kailashahar. It is also stated that the petitioner issued a letter for proposal of allotment of land to him and accordingly the Addl. District Magistrate and Collector, North Tripura vide letter dated 03.06.1998 informed the Sub-divisional Officer, Kailashahar, North Tripura with a copy to the State-In-Charge, TRTC, Kumarghat, regarding the cancellation of allotment proposal in favour of the petitioner and thereafter, on 04.06.2009 the impugned notice was issued to the petitioner by the Deputy Collector & Magistrate to handover the area of land measuring 0.02 acres to the TRTC authority as per provisions of Section 5(2) of TPP Act, 1982.

6. The State respondents, by way of filing counter affidavit, contended that land comprising 0.38 acres of CS Plot No. 126/342 was

bifurcated into RS Plot No. 220/5338 was allotted in favour of TRTC and the land in question measuring 0.02 acres comprising plot No. 220/5338 under Khatian No. 1/131 Mouja Pabiacherra under Kumarght Tehsil has been allotted to the TRTC vide order No. 63334/F2/DSAO/KLS/ESTT/78 dated 03.05.1978. On the basis of the said allotment order Khatian had been opened for 0.36 acres of land mentioning plot No. 220 under Khatian No. 17 in favour of TRTC and remaining 0.02 acres of land is lying under the possession of the petitioner since 1980.

7. Mr. Chakraborty while urging for quashing the impugned notice would contend that in the garb of show cause notice the respondent No. 3 has passed the final order of vacation relating to the alleged unauthorized possession of the land without providing him any opportunity/hearing.

8. On the other hand, learned counsel for the respondents submit that the instant writ petition is not maintainable in view of the decision of the Apex Court in ***TN Godavarman Thirumulpad V. Union of India and Ors, (2000) 10 SCC 494*** as the petitioner instead of showing cause to the impugned notice straightway approached this Court. He also submits that as per sub-section (1) of Section 11 of the TPP Act, against the impugned order an appeal lies before the appellate officer, i.e. the District Magistrate & Collector, North Tripura.

9. This Court has gone through the impugned notice from which it appears that the notice was issued upon the petitioner observing that the petitioner has encroached a portion of TRTC land by constructing kaccha construction illegally and he was allowed seven days time to vacate the aforesaid land or else possession would be taken after evicting him from the public premises as per provision

under Section 5(2) of the TPP Act. According to this Court, the impugned notice is nothing but a show cause notice and instead of showing cause to the respondent-Estate Officer, the petitioner approached this Court even without availing the alternative remedy as prescribed in the TPP Act.

10. In ***TN Godavarman Thirumulpad*** (supra), the Apex Court while considering almost a similar matter held that since the applicants had rushed to the High Court against the issuance of notice by the Forest Range Officer without having given any response to the notice, the High Court rightly dismissed their special civil applications. The Apex Court also found no fault with the order of the High Court dated 09.07.1997. In the instant case also admittedly the petitioner filed the instant writ petition without answering the impugned notice issued by the respondent No. 3 directing him to vacate the encroached land. Therefore, the instant writ petition is not maintainable.

11. However, in the interest of justice the petitioner is allowed two weeks time to file reply to the respondent No. 3 against the impugned notice dated 04.06.2009, and the respondent shall dispose of the reply within a period of six weeks from the date of receipt of the same and till disposal of the reply to the notice, if any filed, the interim order passed earlier by this Court shall continue.

12. With the above, the instant writ petition is disposed of. No costs.

JUDGE

lodh