

THE HIGH COURT OF TRIPURA
AGARTALA

W.A. 10 of 2015

M/S. Rose Valley Real Estates & Constructions Limited,
Having its Registered Office at R.G.M. 25/3010,
Raghunath Pur, VIP Road, Kolkata – 700 059,
Represented by the Regional Director, Rose
Valley Real Estates & Constructions Limited,
Having office at Mantribari Road, P.O. Agartala,
P.S.-West Agartala, West Tripura, under authority
of the Board of Directors of the Company.

..... *Appellant*

- Vs. -

1. The State of Tripura,
Represented by the Secretary
to the Government of Tripura,
Urban Development Department,
New Secretariat Complex,
P.O.-Kunjaban, Agartala, West Tripura.
2. The Director,
Urban Development Department,
Government of Tripura,
Pandit Nehru Complex, Gurkhabasti,
P.O.-Kunjaban, Agartala, West Tripura.
3. Agartala Municipal Corporation,
Represented by the Municipal Commissioner,
Having office at City Centre, Paradise Chowmahani,
P.O.-Agartala, Agartala, West Tripura.
4. The Municipal Commissioner,
Agartala Municipal Corporation,
Having office at City Centre, Paradise Chowmahani,
P.O.-Agartala, Agartala, West Tripura.
5. Tripura State Electricity Corporation,
Represented by Chairman Cum Managing Director,
Having office at Bhuturia, Near Boys Bodhjung School,
P.O.-Agartala, Agartala, West Tripura.
6. DGM, Electric Div.-I, Banamalipur,
P.O.-Agartala, Agartala, West Tripura.

..... *Respondents*

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA
HON'BLE MR. JUSTICE U.B. SAHA

For the appellant	: Mr. A.K. Bhowmik, Sr. Advocate. Mr. Raju Datta, Advocate.
For the respondent Nos.1 & 2.	: Mr. T.K. Roy, Sr. Advocate, Mr. T. Datta Majumder, GA, Mr. S. Chakraborty, Addl. GA.
For the respondent Nos.3 & 4.	: Mr. K.K. Pal, Advocate,
For the respondent Nos.5 & 6.	: Ms. S. Deb Gupta, Advocate,
Date of hearing	: 09.04.2015.
Delivery of Judgment & order	: 30.04.2015.
Whether fit for reporting	: Yes.

JUDGMENT & ORDER

(Deepak Gupta, CJ.)

This writ appeal is directed against the Judgment dated 20.03.2015 delivered by a learned Single Judge of this Court whereby the learned Single Judge held that sitting singly he could not entertain the petition.

2. Briefly stated the facts of the case are that the petitioner-Company (appellant herein) raised construction of a building. There was some dispute as to whether the building complied with all the statutory provisions relating to building by laws in the town of Agartala. Thereafter, the petitioner-Company

filed W.P. (C) 465 of 2010 in the Agartala Bench of the Gauhati High Court which then exercised jurisdiction over the State of Tripura. That writ petition was disposed of vide judgment dated 10.09.2012 and the operative portion of the order reads as follows:-

"23. 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.

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

3. The State of Tripura filed an appeal against the said judgment and the Division Bench in the Writ Appeal 276 of 2012 filed by the State of Tripura passed an order disposing of the application for interim directions and the relevant portion of the order dated 03.10.2012 reads as follows:-

"In the meanwhile, 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. List for final hearing on 03.12.2012."

4. Therefore, what the Division Bench ordered was that the Municipal Corporation should give an opportunity to the writ petitioner to rectify the defects in the building without prejudice to the rights and contentions of the parties in the writ appeal pending before the Court. The Appellate Court also permitted the issuance of occupancy certificate subject to further orders in appeal. This only meant that if the appeal of the State was allowed naturally, the occupancy certificate would be cancelled. The Division Bench also clearly held that if the objections are not removed, the authorities are not liable to issue the occupancy certificate, but in that case, the writ petitioner may be informed. Lastly, it was held that correctness of such view will be open to question.

5. We are clearly of the view that when any decision taken after the order dated 03.12.2012 is challenged that will give rise to a fresh cause of action and which can be challenged by filing a fresh writ petition. However, we are in agreement with the learned Single Judge that keeping in view the earlier orders of the Appellate Court judicial discipline requires that the Single Judge should not hear such a matter. Since the Division Bench is now dealing with the matter, we need not say anything further.

6. Coming to the facts of the present case, it would be pertinent to mention that after the order of the Division Bench was passed on 03.12.2012, it appears that the petitioner on 14th October, 2012 submitted a plan and asked for occupancy

certificate. Then Chief Executive Officer of the Agartala Municipal Council refused to grant such occupancy certificate and the communication in this behalf was made to the petitioner on 27th November, 2012. Again a prayer was made for grant of occupancy certificate and on 9th September, 2014 provisional occupancy certificate was issued to the petitioner-Company and the same reads as follows:-

"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/fine/cess or other charges that UD/AMC or any Govt. agency imposes has to be submitted by the owners of the building."***

7. Thereafter, on 29.12.2014, a notice was issued by the Municipal Commissioner, which reads as follows:-

"NOTICE

Rose Valley building at Sakuntala Road is functioning with a full fledged office of Khabar 365 in T.V channel. But till date the plan permission and final occupancy certificate has not been issued from this office. The matter was also brought to notice of U.D. Department.

In view of the above and as directed by U.D Department you are ordered to vacate the building with in 3 (three) days to restore the statueque. As the case is pending with the Hon'ble High Court and any attempt to

occupy the disputed building may be treated as contempt of court."

8. The petitioner filed detailed reply to the said notice on 1st January, 2015, but on 9th February, 2015 another notice was issued to the petitioner. In this notice it was also mentioned that any attempt to occupy the building would be treated as contempt of Court. The petitioner was asked to vacate the building within three days failing which the matter will be brought to the notice of the High Court.

9. On 13th March, 2015 an order was passed whereby the writ petitioner was again asked to vacate the building and it was stated that in case he did not vacate the building, the power and water connection will be disconnected.

10. We have heard Mr. A.K. Bhowmik, learned senior counsel for the petitioner and Mr. T.K. Roy, learned senior counsel for the Agartala Municipal Council.

11. We may make it clear that we are not going into the merits of the case in view of the decision which we propose to take. It stands proved on record that the provisional occupancy certificate was granted on 9th September, 2014. Thereafter, the petitioner occupied the premises. It has been urged on behalf of the State that the provisional occupancy certificate does not permit a party to occupy the premises since the Municipal Act and Rules

do not envisage the issuance of a provisional occupancy certificate. We are not in agreement with this submission. It is the Commissioner of the Municipal Corporation, who was issued the provisional occupancy certificate. He has laid down certain conditions on which the certificate has been granted. The certificate was treated to be a provisional one because it was subject to the outcome of the decision by the High Court.

12. The notice dated 29.12.2014 is absolutely misleading. In the said notice, no reference has been made to the provisional occupancy certificate issued by the same officer only three months earlier. Furthermore, in the notice all that has been stated is that the UD Department has ordered the building to be vacated within three days. We are also very unhappy with the language of the notice in so far as it states that any attempt to occupy the disputed building may be treated as contempt of Court. The Commissioner, Municipal Corporation was aware that the building had already been occupied and therefore, the notice for vacation was issued. How could he in the next line say that any attempt to occupy the disputed building will be treated as contempt of Court. In an event whether contempt has been committed or not is for this Court and not for the Commissioner, Municipal Corporation to decide. It is indeed shocking that despite the notice have been issued on 29th December, 2014, the Commissioner, Municipal Corporation did not file any contempt application in this Court

because obviously, there was no contempt. The order of this Court has not been violated at all. The officials should not use the name of the Court to unnecessary threaten the parties. In the notices issued to the petitioner there are no reasons given why the provisional certificate is to be cancelled. There is total violation of the Rules of natural justice because no hearing whatsoever has been given to the petitioner. The notices sent by the Municipal Corporation do not set out the reasons why earlier permissions are being cancelled or what is reason why the provisional certificate should be cancelled. A notice given to a party which purports to take away the certain vested rights must give set out the reasons in detail.

13. Therefore without going into the merits of the case, we dispose of this appeal with the following directions:-

- (i) That the notice dated 30th March, 2015 is quashed;
- (ii) that the respondents are directed to immediately restore the power and water connection to the petitioner;
- (iii) that the Agartala Municipal Corporation or the State of Tripura may issue notice to the petitioner setting out the reasons why the provisional occupancy certificate is sought to be cancelled;
- (iv) the appellant shall within one week of the receipt of the notice file his detailed reply thereto;

(v) the appropriate authority shall hear the appellant or its representative or its counsel within 15 (fifteen) days thereafter and pass a reasoned order dealing with all objections raised by the petitioner strictly in accordance with law;

(vi) any party aggrieved by the order of the appropriate authority can approach this Court, but any such petition shall only be listed before the Division Bench.

14. we would have in fact directed that Writ Appeal No. 276 of 2012 be heard at an early date, but unfortunately, that Writ Appeal cannot be heard because except one of us (Deepak Gupta, CJ), the other judges for one reason or the other cannot hear the petition. We have already made it clear that the parties are at liberty to approach the Apex Court for appropriate orders in that regard. However, any fresh matter filed in this regard shall now be listed before Division Bench.

JUDGE

CHIEF JUSTICE

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