

Party Name : SUDHIR KARMAKAR Vs AGARTALA MUNICIPAL CORPN. & 3 ORS

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THE HONBLE MR. JUSTICE S.TALAPATRA

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Heard Mr. D.R. Choudhury, learned counsel appearing for the petitioner as well as Mr. K.K. Pal, learned counsel appearing for the respondents No. 1, 2 & 3 and Ms. S. Deb Gupta, learned counsel appearing for the respondent No.4.

By means of this writ petition, the petitioner has challenged the order under F.No.116-IV/Touji/AMC/05/629-32, dated 15.09.2014 (Annexure-V to the writ petition), whereby the touji of the respondent No.4 has been cancelled.

It is not in dispute that the touji, which has been cancelled by the impugned order dated 15.09.2014 (Annexure-V to the writ petition), was posted in favour of the respondent No.4, but the respondent No.4 has not approached this court, challenging the order of cancellation of the touji. The very first issue this court is confronted with is whether the petitioner has got any locus standing to file this petition under Article 227 of the Constitution of India?

Mr. D.R. Choudhury, learned counsel appearing for the petitioner has submitted that within the knowledge of the respondent No.4 as well as the respondent No.1, the petitioner is running his business in the said touji since 2004 and for and on behalf of the respondent No.4, he has been paying the rent to the Agartala Municipal Corporation regularly. As such, the touji which has been cancelled should be posted in his name, on legal and compassionate consideration as the petitioner does not have any other means of livelihood.

From the other side, Mr. K.K. Pal, learned counsel appearing for the respondents No. 1 to 4, has submitted that it is now the admitted position that the respondent No.4 acted illegally in terms of touji rules 5(e) adopted by the Agartala Municipal Corporation. If it is proved that the possession of the touji has been delivered without the permission of the Agartala Municipal Corporation, then such transaction or transfer would entirely be illegal and the Agartala Municipal Corporation may take any action both against the person in whose name the touji is posted and the person who has occupied the possession of the touji illegally. He has, therefore, submitted that the impugned order is not visited by any infirmity.

Appearing for the respondent No.4, Ms. S. Deb Gupta, learned counsel, has submitted that the respondent No.4 informed the Agartala Municipal Corporation that he was not in a position even to repair his shop and has expressed his no objection, if the touji is posted in favour of the petitioner.

It is apparent on the face of the record that after cancellation of the touji, the respondent No.4 was directed by the Agartala Municipal Corporation-respondents to vacate the touji, but he did not respond to the said notice dated 15.09.2014.

On the face of this apparent illegality, this court cannot entertain this writ petition. Accordingly, the same is dismissed.

However, before parting with the records, it is observed that the petitioner would be at liberty to file appropriate application to the competent authority of the Agartala Municipal Corporation, praying for posting the touji in his name as Ms. S. Deb Gupta, learned counsel appearing for the respondent No.4 has made a specific statement that the respondent No.4 does not have any objection if the touji is posted in favour of the petitioner. On receipt of such application as is contemplated to be made by the petitioner, the Agartala Municipal Corporation shall consider such application within the four corners of the procedure for posting the touji. While considering whether the petitioner would be favoured with the touji or not, the competent authority of the Agartala Municipal Corporation shall also consider the human side that the petitioner does not have any other means of livelihood. There shall be no order as to costs.