

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.1309 of 2019

Sri Shyamal KarPetitioner(s)

Versus

Agartala Municipal Corporation & othersRespondent(s)

WP(C) No.1178 of 2019

Smt. Suvra Das (Roy)Petitioner(s)

Versus

Agartala Municipal Corporation & othersRespondent(s)

WP(C) No.1179 of 2019

Sri Swapan Das alias Swapan Ch. DasPetitioner(s)

Versus

Agartala Municipal Corporation & othersRespondent(s)

WP(C) No.1180 of 2019

Smt. Anamika Basak (Deb)Petitioner(s)

Versus

Agartala Municipal Corporation & othersRespondent(s)

WP(C) No.1181 of 2019

Sri Partha Ch. DasPetitioner(s)

Versus

Agartala Municipal Corporation & othersRespondent(s)

WP(C) No.1182 of 2019

Sri Santu Saha alias Shantu SahaPetitioner(s)

Versus

Agartala Municipal Corporation & othersRespondent(s)

WP(C) No.1183 of 2019

Smt. Soma Basak (Roy)Petitioner(s)

Versus

Agartala Municipal Corporation & othersRespondent(s)

WP(C) No.1184 of 2019

Sri Ajit DasPetitioner(s)

Versus

Agartala Municipal Corporation & othersRespondent(s)

WP(C) No.1310 of 2019

Sri Anjan RoyPetitioner(s)

Versus

Agartala Municipal Corporation & othersRespondent(s)

WP(C) No.1311 of 2019

Sri Santosh KarmakarPetitioner(s)

Versus

Agartala Municipal Corporation & othersRespondent(s)

_B_E_F_O_R_E_
HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI

For Petitioner(s) : Mr. D.K. Biswas, Advocate,
Mr. G.K. Nama, Advocate.

For Respondent(s) : Mr. S.M. Chakraborty, Sr. Advocate,
Mr. T.D. Majumder, Advocate.

Date of hearing
& judgment : **31st January, 2020.**

Whether fit for reporting :

Yes	No
	✓

JUDGMENT & ORDER (ORAL)

These petitions arise in common background. They have been heard together and would be disposed of by this common judgment. For convenience, facts may be noted from WP(C) No.1309 of 2019.

[2] Petitioner has challenged an order dated 16.09.2019 under which he has been granted a period of seven days by the Assistant Commissioner of Agartala Municipal Corporation (AMC, for short) to vacate a stall occupied by the petitioner situated on the southern end of MG Bazaar (West) pond area.

[3] The petitioner is occupying commercial premises in the shape of a stall ad-measuring 149 sq. ft. bearing touji No.21MGB0004 given to the petitioner on rent by AMC. The petitioner pays periodic rent of 374/- per month for such occupancy. The petitioner is running a business of selling medicines from the said place since long. It is undisputed that the petitioner is occupying such premises given to him by the corporation on rent (in the colloquial use it is referred to as touji) since long. Precise date of creating such tenancy, however, is not on record.

[4] According to the AMC, in order to develop MG Bazaar (West) pond area and in order to facilitate approach road, parking space and easy access to fire service vehicles in the area, it was necessary to remove the encroachments which had over a period of time cropped up at the edge of the lake as also to cancel fully or partially certain toujis granted to the individual businessman at the said site. The petitioner's stall is situated at the southern edge of the lake and was one of the several structures which the corporation intended to remove in order to achieve the above stated purpose. After issuing the notice to the petitioner and granting hearing, impugned order dated 16.09.2019 came to be passed which reads as under :

"Municipal Authority has decided to get encroachment free of MG Bazar Pond (West) situated with MG Bazar area, which is most essential for using the water in case of fire incident & entry of Fire Engine through the Southern end of the Pond. Further for rejuvenation purpose of the MG Bazar Pond area and for making the Water body pollutant free ad follow-up developmental activities have been initiated by the Agartala Municipal Corporation, in public interest..

In this regard a Hearing Notice, Vide Letter No. 113/SC/CZ/AMC/2019/1071-1074, dated 25/07/2019, was served to Tauji Holder namely, Sri Shyamal Kar, S/o Late Satish Chandra Kar of MG Bazar South side of West Pond to appear on 21/08/2019 at 11.00 A.M.

Accordingly, Sri Shyamal Kar is represented by his brother Sri Sisir Kar, S/o. Late Satish Chandra Kar, appeared for hearing on scheduled date & time. As per record Sri Kar is having a Stall in the southern end of the MG Bazar Pond, bearing Tauji No: 21MGB0004 with an area of 149.5 Sq.Ft.

Now for rejuvenation of the Water body as well as for easy access of the approachable road, it is decided by the Municipal Authority for cancellation of the Tauji bearing Tauji No: 21MGB0004, which remains in the name of Sri Shyamal Kar as per the power conferred upon Agartala Municipal Corporation under 8(C) of Tauji Bidhi, 2007 Regulation of AMC. Further, Sri Shyamal Kar may approach Agartala Municipal Corporation for allotment of fresh Tauji within Agartala, which the Municipal Authority may consider as per availability.

Now for public interest, Sri Shyamal Kar, is hereby instructed to vacate the stall and to take away his valuable belongings within (seven) days, of the receipt of this Order, failing which Agartala Municipal Corporation will take necessary action in vacating his stall."

[5] At that stage, the petitioner filed the present petition challenging the said order. By an order dated 08.11.2019 the petitioner was protected against any coercive measures being taken by the AMC in this respect. In such background, Mr. D.K. Biswas learned counsel for the petitioner submitted that the impugned action of the AMC is wholly illegal and unlawful. In support of the challenge, he raised the following contentions :

(i) The concept of touji has nowhere been defined. The petitioner was granted the said stall on rent since several years, long before the AMC framed Touji Regulation 2007 (hereinafter to be referred to as the said Regulations). In absence of any clarity on this concept, petitioner's tenancy cannot be terminated.

(ii) The action is initiated by the AMC authorities under the directions of the State Government. AMC is an autonomous body and the local authority governed by elected representatives. The Government has no authority to enforce any decision on the AMC which would breach its autonomy.

(iii) He submitted that all the petitioners are continuing their small businesses from such shops since decades. They have been earning their livelihood from such small businesses. Their abrupt evictions would result into great inconvenience and hardship. Without offering similar alternative sites for carrying on their businesses, corporation cannot evict the petitioners.

[6] On the other hand, AMC has filed replies primarily contending that in order to develop the area around the said lake it was necessary to widen the road which would also enable the fire service vehicles to freely access the region. Several encroachments were removed. It was also necessary to cancel the toujis in favour of those shop occupants whose shops were creating hindrance in widening of the road.

[7] On the basis of such stand taken by the AMC, Mr. D.K. Biswas, learned counsel for the petitioner submitted that the petitioners are occupying the shops on monthly tenancy. Such tenancy can be terminated at any time for the *bona fide* requirement of the Corporation. Any inconvenience to the petitioners in the process, must be viewed in the background of larger public interest. He denied the allegation that the Executive Officers of the AMC are implementing the decision of the Government. He submitted that the decision was approved at the highest level of the Mayor of the corporation. He pointed out that the petitioners were also offered alternative places for their business in Radhanagar market place. However, the petitioners are unwilling to shift there. He submitted that the rights and obligations of touji holders are governed by the said Regulations which have statutory force.

[8] The Tripura Municipal Act, 1994 (the Act, for short) contains Chapter-XII pertaining to Municipal markets and slaughter houses. Section-181 contained in the said chapter

envisages that the Municipality may provide and maintain Municipal markets, slaughter houses or stockyards in such manner as it may think fit together with stalls, shops, sheds and other buildings and conveniences for the use of persons carrying on trade or business in or frequenting such markets or slaughter houses. Sub-section 1 of Section 182 of the Act provides that no person shall without the general or special permission in writing of the Municipality, sell or expose for sale any commodity or article or animal or bird in any Municipal market or utilize such space within the Municipal market for any other purpose. Section-183 of the Act provides that the Municipality may charge such premium, stallage, rent or fees as may, from time to time, be fixed in this behalf for the occupation or use of any stall, shop, stand, shed or open space in a Municipal market or Municipal slaughter houses. Under sub-section 1 of Section 184 the Municipality would publish the terms and conditions for premium to be charged in such manner as it may decide. Sub-section 1 of Section 185 provides that no place other than a Municipal market shall be used as a market unless such place has been licensed as a market by the Municipality under the provisions of the said Chapter and on such terms as the Municipality may determine.

[9] In terms of the above provisions contained in Chapter-XII of the Act, the Municipality may provide and maintain a Municipal market or slaughter houses and allow by granting necessary permission to interested persons to sell or expose for the sale any commodity or animal and for which purpose the

Municipality may charge premium, stallage, rent or fee as may be fixed from time to time.

[10] Section 275 of the said Act pertains to the power to make regulations and provides that the Municipality may make regulations not inconsistent with the provisions of the said Act or the Rules made thereunder in the matters where regulations are required to be made under the Act.

[11] In exercise of such powers the AMC has framed the said Regulations. Section 2(iii) defines touji as to mean Municipal Council's owned/acquired or occupied land/viti/stall/pond etc. which is allotted with terms and conditions for conducting business/trade with prescribed rent/fees. Regulation 3 empowers the Municipality to establish, take care, supervise, develop and collect taxes from municipal markets, markets conducted under the management of the Municipality etc. Regulation 5 lays down conditions for a touji holder to comply. As per Regulation 6 in case of violation or non-compliance of such conditions, the concerned officer after giving notice of 15 days with the approval of the competent authority may either cancel the touji or take possession of the place or temporarily cancel the touji or impose any financial penalty for such breach. Clause(a) of Regulation 7 provides for the manner of fixing the rent for such occupation which would be revised once every five years. Clause(b) of Regulation 7 deals with illegal occupation. Clause(c) permits the corporation to cancel the touji fully or partly in public interest or for its own requirement and reads as under :

"(c) In the public interest or for own requirement of Municipal Council if a complete or part of touji stall, shop, land, slaughter house, stock yard etc. are required, Municipal Council may cancel such touji fully or partly and utilize such stall, shop, land, slaughter house, stock yard etc. for specified purpose. In such case 15 days notice in advance shall be considered as sufficient. If there is any opportunity to rehabilitate the shopkeepers /organizations evicted by the Municipal Council or there remains any opportunity to rehabilitate in other places, the concerned shopkeeper/trader may get required land or stall. In such case, the decision of the Municipal Council shall be treated as final."

[12] Regulation 10 envisages granting Municipal properties and market areas on long term lease. Regulation 11 requires a touji holder to return the occupied rooms, stall, lands, slaughter house etc. if he no more needs it. As per Clause(b) of Regulation 11 he may also apply for transferring the right in favour of some other person. Regulation 12 prohibits construction of any kind by a touji holder in the market without the permission of the Municipal authority. Chapter-IV fixes the monthly rent per sq. ft. for different kinds of properties of the corporation.

[13] It can thus be seen that long before the said Regulations were framed, the said Act contained detail provisions enabling the Municipal corporations to maintain market places and grant shop or similar establishments on rent. The said Regulations are only for laying down procedure for grant of, of occupying, paying monthly rent at prescribed rates and for vacating the premises subject to conditions. At best the petitioners can contend that prior to the framing of the said Regulations, the rights and obligations between the touji holders and the corporation were governed by the provisions contained in the said Act and the procedure for implementation thereof was

introduced by virtue of the said Regulations. Even if the petitioners therefore were put in possession of their respective premises on rental basis before the Regulations were framed, by virtue of the said statutory interdict, their rights, obligations, liabilities and procedures can be governed by such statutory framework. Even otherwise, the petitioners who are tenants of the AMC, have no unlimited right to continue to enjoy such tenancy in perpetuity. When larger public interest *bona fide* demonstrated by the AMC require eviction of some of the occupants, in my opinion, no vested rights are demonstrated which would prevent the AMC from cancelling the tenancy and seeking eviction of the premises.

[14] The respondents have filed two affidavits outlining the reasons for the steps initiated by them. In the first affidavit dated 22.11.2019 it is pointed out that the AMC had initiated the steps of development of MG Bazar (West) pond area and as part of the project it was necessary to provide a proper approach road, parking space and easy access to fire service vehicles. For such purpose, process was initiated to make the market area green and environment friendly. There are large numbers of touji holders on all sites of the pond. It was therefore necessary to clear such area by either fully or partially cancelling the touji. In order to meet with the petitioners' contention that such action of the authorities was not with the approval of the Mayor, along with the said affidavit the respondents have produced a copy of a file noting. Under note-2 the Municipal Commissioner of AMC had

proposed restoration of the MG Bazar area by withdrawing touji in favour of 17 touji holders as well as removal of one encroachment. It was suggested that those who may be evicted may be rehabilitated elsewhere for which proposal may be sent to the concerned department to give them stalls at Radhanagar shopping complex. This note was placed before the Mayor of the AMC. He put his approval on the same on 06.09.2019. In another affidavit dated 02.12.2019 the respondents have placed reliance on the provisions contained in the said Act and the Regulations made thereunder.

[15] I do not find that the petitioners have thus made out any case of the AMC acting under the directorates of the State Government and without the concurrence of the Mayor of the corporation. Since all the petitioners have been doing their small businesses from small establishments in Municipal market area since decades, they would have at least legitimate expectation of being resettled elsewhere and to that extent I believe the petitioners can make a case. However, from the inception, the corporation has shown willingness to resettle the petitioners. The proposal for cancellation of touji and eviction of the occupants itself contains such a suggestion. During the course of arguments, learned counsel for the petitioners however has shown unwillingness of the petitioners to shift to any such alternate sites on two grounds, namely, that the premises now offered are much smaller than those occupied by the petitioners and secondly that such shops are situated at a place away from

market area. Insofar as the first grievance of the petitioners is concerned, neither side has placed any measurements of the existing shops of the petitioners as against those which the corporation was ready to offer them. Such issues must be threshed out at the corporation level. If the corporation is offering a drastically reduced area of the shops by way of alternative, the same would not be meaningful alternative resettlement. Though not identical, the petitioners must receive an offer of similar size of shops. Regarding the location, the petitioners cannot choose the very same spot from where they have been removed, or else there was no question of eviction at all. The petitioners must be prepared to suffer some inconvenience in the process of relocation. Here again if the site of relocation is completely in the wilderness, away from any commercial activities or not accessible by proper road, any such offer would be wholly illusory. However, what appears *prima facie* on the record is that such alternative sites are situated in another market which again is maintained by the Municipal Corporation. The petitioners obviously cannot reject such an offer only on the ground that the place where they are doing the business offer more attractive commercial site than one which is being offered to them by the AMC.

[16] However, all these things I leave for the corporation to work out with the petitioners if the petitioners or any of them show interest in accepting the alternative offer. Bearing in mind the above observations, the corporation will, I am sure, consider

the request of a fair resettlement. For such purpose, it would be open for the petitioners to approach either individually or collectively to the Commissioner of AMC who shall personally apply his mind and as far as possible provide alternative to the petitioners to the best possible extent. For a period of 15 days from today and if any such approach is made by any of the petitioners within such period, in their cases till such request is disposed of by the Commissioner there shall be no eviction.

[17] Subject to above, petitioner's main challenge is turned down. All the writ petitions are disposed of accordingly. Pending application(s), if any, also stands disposed of. Interim relief(s) previously granted is vacated.

(AKIL KURESHI), CJ

Dipesh