

**HIGH COURT OF TRIPURA
AGARTALA
WP(C) No.514 of 2024**

Sri Subrata Dasgupta ***Petitioner(s)***
Versus
The State of Tripura & Ors. ***Respondent(s)***

For the Petitioner(s) : Mr. B N Majumder, Sr. Advocate.
Mr. D J Saha, Advocate.

For the Respondent(s) : Mr. Kohinoor Narayan Bhattacharjee, GA.

Date of hearing and delivery of Judgment & Order : 31.07.2024

Whether fit for reporting : YES.

**HON'BLE MR. JUSTICE T. AMARNATH GOUD
JUDGMENT & ORDER(ORAL)**

This present writ petition has been filed under Article 226 of the Constitution of India seeking the following reliefs:-

"i. Show cause the respondents as to why a writ in the nature of Mandamus, mandating/directing/commanding the respondent Authorities to dispose of the complaint dated 12.08.2022, 17.08.2022, 18.04.2023 and 19.02.2024 within a specified time limit, shall not be issued.

ii. Show cause the respondents as to why a writ in the nature of Mandamus directing/commanding/mandating them to immediately abstain the respondent No.5 from constructing the building in his premises till the complaints of the petitioner dated 12.08.2022, 17.08.2022, 18.04.2023 and 19.02.2024 is disposed of shall be not issued.

iii. Show cause the respondents as to why a writ in the nature of Mandamus directing/commanding / mandating them to take appropriate steps according to law if it is found that the construction of the respondent No.5 violates the norms of the prescription of law shall be not issued.

iv. Issue rule NISI.

iv. In case the respondents show causes or not be kind enough to make prayers No. i,ii, and iii absolute.

v. Pending disposal of the instant Writ Petition, be kind enough to direct the respondents to immediately abstain the respondent No.5 from constructing any further."

[2] Brief facts of the case is that the petitioner of this case noticed that in the year 2022, respondent No.5, who is his neighbor constructing his building by violating the norms of the Tripura Municipal Act and the Tripura Building Rules. Objecting to such illegal construction, the petitioner has submitted his objection before the Municipal Authority on 12.08.2022, 17.08.2022, 18.04.2023 and 19.02.2024 but it is needless to say that the respondents authority neither rejected the complaints nor disposed those complaints of violation of the statutory provisions. Hence, this present writ petition.

[3] Mr. BN Majumder, learned senior counsel assisted by Mr. D J Saha, learned counsel appearing for the petitioner submits before this Court that the petitioner herein approached the concerned authority by filing written complaint dated 12.08.2022, 17.08.2022, 18.04.2023 and lastly on 19.02.2024 regarding the illegal construction of respondent No.5 who is the neighbor of the petitioner herein and has been carrying out building construction violating the rules of Tripura Municipal Act, 1994 and Tripura Buildings Rules, 2017, Rule 48 wherein it has been specifically stated that there is a provision for minimum permissible vacant space in every residential and other than residential buildings within a property.

[4] The provision of Rule 48 of Tripura Building Rules, 2017 reads as under :-

".....(2) The minimum front open spaces shall be as follows:-

Use of building	Height of building (metres)	Minimum front open space at ground level at its narrowest part (metres)
Residential	Upto 14.50	1.80
Assembly/Institutional/Educational/Club	Upto 14.50	3.00
Commercial having built up area more than 100 sqm	Upto 14.50	4.00
Industrial/Mercantile(wholesale)/storage	Upto 14.50	5.00
Others not specified above	Upto 14.50	1.80

Thus, he prayed to allow this writ petition.

[5] On the other hand, Mr. Kohinoor Narayan Bhattacharjee, learned Government Advocate appearing for the respondents-State vehemently opposed the prayer of the petitioner and prayed to dismiss the same as Writ of Mandamus under Article 226 of the Constitution of India is not maintainable as there is an effective alternative remedy lies before the Civil Court.

[6] Heard both sides and perused the evidence on record.

[7] 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.5. On laches and delay has not taken legal action promptly to get the issue resolved. The petitioner has an effective remedy in approaching the concerned Civil Court by filing a suit seeking relief against building 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 of whether the petitioner and the unofficial respondent are neighbors, to what extent the property of the petitioner is constructed, to what extent the un-official respondent is constructing the property, whether he is having a 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 proper Trial Court.

[8] This court in similarly situated matters i.e. WP(C) No. 471 of 2022, dated 20.06.2022 passed the following orders, which reads as under :-

"18. 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 un-official 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, he is only abusing the process of the law. It cannot be said that the petitioner mere filing complaints before the official respondents has approached with clean hands. Even the bonafide of the petitioner, as well as the conduct of the unofficial respondent No.5, 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. The action of the petitioner in converting the litigation under the Civil Court into petition under Article 226 of the Constitution of India by way of writ jurisdiction is unwarranted and, accordingly, the same is dismissed."

[9] It is also seen that even according to the petitioner when the construction work is in progress from 2022, except filing a complaint and reminders thereafter, allowing it to go on till now in 2024 appears to this Court that the petitioner is not having a serious concern about the issue involved. The delay and laches approaching this Court rather approaching Civil court can also be viewed on the ground of laches even according to the petitioner when the work is in progress till date.

[10] In view of the above discussion, this court is of the opinion, since the issue is not public interest litigation to entertain and take cognizance upon the complaint of the petitioner. It is purely a private civil dispute between the petitioner and the Un-official respondent and now involving Official-respondents

by invoking Article 226 of the Constitution of India is un-warranted and the writ jurisdiction is misconceived. The petitioner can always agitate his legal rights including if any violation of Building construction Rules and seek appropriate relief before the appropriate forum.

Thus, the present writ petition is not maintainable under Article 226 of the Constitution of India and the same is liable to be dismissed. Accordingly, the writ petition is dismissed.

As a sequel, miscellaneous application(s) pending if any, shall stand closed.



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SUHANJIT
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