



**HIGH COURT OF TRIPURA
AGARTALA
WP(C) No. 437 of 2026**

1. Shri Kishore Roy Acharjee

S/o- Lt. Harendra Roy Acharjee,

2. Smt. Arpita Chakraborty

W/o- Shri Kishore Roy Acharjee.

Both are residents of West Pratapgarh, PO & PS A.D Nagar, Agartala, West Tripura, 799003.

3. Shri Partha Pratim Paul

S/o- Shri Tushar Kanti Paul

4. Smt. Paramita Das

W/o- Shri Partha Pratim Paul

Both are residents of H.No.96 , Kalibari Lane, ward No.22, Agartala, P.O Agartala, P.S West Agartala, District West Tripura, 799001.

.....Petitioners.

Versus

1. The State of Tripura

Represented by the Secretary to the Government of Tripura, Department of Urban Development , New Secretariat , P.O & P.S NCC Agartala, West Tripura, 799010.

2. The Commissioner, Agartala Municipal Corporation, Agartala.

3. The Assistant Municipal Commissioner, South Zone, Agartala Municipal Corporation.

4. The Nodal Officer, Tripura Real Estate Regulatory Authority, Jagannath Bari Road, Agartala, 799001.

5. **Shri Dilip Kumar Sutradhar**, S/o- Late Dhirendra Chandra Sutradhar,
Resident of Town Bordowali, Gandhighat, P.O Agartala, P.S West Agartala,
District- West Tripura, 799001.

.....**Respondents.**

For the Petitioner(s) : Mr. Tapas Kumar Deb, Advocate.

For the Respondent(s) : Mr. Sankar Lodh, Advocate.
Mr. Dipankar Sarma, Addl.G.A.
Mr. Arijit Bhaumik, Advocate.
Mr. K. Roy, Advocate.
Ms. S. Ghosh, Advocate.

Date of hearing : 20.08.2026.

Date of delivery of
Judgment & Order : 08.09.2026

Whether fit for reporting : YES.

BEFORE

HON'BLE JUSTICE DR. T. AMARNATH GOUD

JUDGMENT & ORDER

Dr. T. Amarnath Goud, J

[1] Heard Mr. Tapas Kumar Deb, learned counsel appearing for the petitioners. Also heard Mr. Dipankar Sarma, learned Addl. G.A. appearing for the respondent-State. Mr. Sankar Lodh, learned counsel appears for respondent No.5 and Mr. Arijit Bhaumik, learned counsel presents before this Court on behalf of the respondents-Municipal Corporation.

[2] The brief facts of the petitioners case is that an apartment namely "The Royal Peace Apartment" at Battala, Agartala was developed by the respondent No.5 being the developer. It is stated that the petitioners purchased G-1 to G-4 in the Ground Floor of the apartment in the year 2020 for commercial purpose. During the period of construction respondent No.5 in violation of the approved Municipal Building Plan erected latrine and

toilet one in Northern side of the apartment, and another in the southern side of the apartment over the drain an open side space. Accordingly, petitioners herein raised objection whereby the respondent No.5 assured that the construction would be dismantled after completion of the construction as constructed for use of labourers. But, till today the respondent No.5 has not dismantled it. It is also stated that the petitioner No.1 purchased the flat in Ground floor for Pathology Laboratory and Petitioner No.3 for Eye Clinic in the Ground Floor but the petitioner No.1 had to close down while the petitioner No.3 could not open his Eye clinic for creation of such construction. Further, it is stated that respondent No.5 had erected a brick wall tin shed guard room in the ingress and egress of the apartment causing hurdles in smooth movement of vehicle and pedestrians. Thereafter, finding no other alternative petitioners herein lodged complaint before the respondent nos.3 & 4 and after physical inspection they have passed orders directing the respondent No.5 to demolish the unauthorised construction within the time limit as mentioned in the orders. But, till today the respondent No.5 did not take any step to implement such orders. Thus, being dissatisfied by the act of respondent No.5, this instant writ petition is filed seeking the following reliefs:-

“i. ISSUE RULE, Calling upon the State Respondents to show cause as to why a Writ of Mandamus should not be passed for demolishing the unauthorized construction of latrine and toilet and Brick wall tin shed Guard Room within the time as fixed by this Hon'ble Court consequent upon Final order dated 10th November, 2025 in case No.7 of 2025 under section 31 of T-RERA Act, 2016(Annexure-9) and also the order passed by the Respondent No.3 vide No.F.65/SZO/AMC/2024 (shadow)/714-715, dated 7 May, 2025.

ii. ISSUE RULE, calling upon the Respondents to show cause as to why a Writ of Mandamus should not be passed directing to initiate proceeding against the Respondent No.5 for wilful violation of the Tripura Building Rules and the Municipal Approved Building Plan;

iii. ISSUE RULE calling upon the Respondent No.5 to pay adequate compensation to the Petitioners for compelling them to suffer to live in an worst unhygienic condition causing health hazardous and creating obstruction from free air and sunlight;

iv. Cost of the suit for unnecessary dragging the petitioner into the litigation;

V. After hearing, be pleased to make the Rules absolute in terms of Prayer i. ii, iii & iv above;

vi. Any other relief(s) as to this Hon'ble High Court may deem fit and proper”.

[3] Mr. Tapas Kumar Deb, learned counsel submits before this Court that the respondent No.5 being the developer constructed the apartment wherein in terms of the approved drawings and design the developer started construction of the apartment but, thereafter, beyond the approved building plan dated 01.02.2020, the developer i.e. respondent No.5 erected latrine and toilet one in Northern side of the apartment, over the drain leaving the space as open facing the construction of the apartment and another on the southern side of the apartment over the drain an open side space. He also submits that due to this unauthorized construction flat owners are compelled to live in a most unhygienic condition and the petitioners who are running their commercial activities in the ground floor are also under going through several hurdles.

[4] He further argued that the respondent No.5 did not pay any attention to their requests for removal of this unauthorized construction. Thereafter, finding no other alternative the petitioners herein lodged complaint before the Assistant Municipal Commissioner, South zone, Agartala Municipal Corporation vide complaint dated 07.01.2025 and 02.12.2025, Director of Fire Service and also before the respondent No. 4 by filing a complaint on 16.05.2025. He also contends that the Assistant Municipal Commissioner passed order on 06.05.2020 for demolishing of the said construction and the respondent No.4 also passed an order dated 19.06.2025. Thereafter, respondent No.3 on the basis of enquiry report again passed an order dated 10th Nov.2025, which also speaks for removing the unauthorized constructions. But, even thereafter, respondent Municipal Corporation failed to take any action on the issue of demolishing the unauthorized constructions. Learned counsel therefore, prays before this Court to implement the orders of the concerned respondents, thereby allowing his reliefs.

[5] On the contrary, Mr. Sankar Lodh, learned counsel represents before this Court that the dispute herein lies between the petitioners and the other flat owners and the petition itself is not maintainable, since, neither any fundamental rights nor any statutory rights of the petitioners have been violated by State or its authority, and hence, they cannot approach this Court under Article 226 of the Constitution of India. According to him, the petitioners herein purchased the flat for residential purpose but, thereafter, they converted for commercial purpose which is also a violation of rules. He also submits that it is specifically stated in the sale deeds that presence of toilets in ground floor as one of the common areas and facilities.

[6] Mr. Lodh, learned counsel also contends before this Court that after passing of the order from the Assistant Municipal Commissioner as well as T-RERA, respondent No.5 discussed with the Executive Committee of the building for demolition of the toilets, but they did not agree to demolish the same, and thereafter, on several occasions, his client tried to demolish the toilets as well as the guard rooms, but due to strong resistance from the Executive committee as well as other flat owners, he failed to demolish the same. Thereafter, he pleads before this Court that his client has no interest of continuance of the above said toilets. He also states that the petitioners suppressing the aforesaid facts again approached the T-RERA by filing an Execution proceeding and after receipt of the notice from the execution proceeding, his client appeared before the T-RERA and submitted the aforesaid facts and thereafter by an order dated 16.03.2026, the Regulatory Authority directed him to demolish the construction after taking assistance from police and in compliance with the Order of the Regulatory Authority dated 16.03.2026, he approached the OC, AD Nagar PS by letter dated 02.04.2026 for providing adequate police personnel by which he can demolish the toilets and guard room. On receipt of the letter dated 02.04.2026, the police authority asked him to demolish the unauthorized construction on 11.04.2026 in their presence, and accordingly, on 11.04.2026, he engaged labours for demolition of the same, but the flat

owners resisted him from such demolition in presence of the police and considering the situation police forbade his client from demolishing the toilets. He, therefore, prays before this Court since, the matter pertains to a civil in nature so under Article 226 of the Constitution of India, it is not maintainable. Hence, he prayed to dismiss the petition.

[7] Mr. Arijit Bhaumik, learned counsel appearing for the respondent-Municipal Corporation submits before this Court that the petitioners herein simultaneously pursuing remedies on the one hand they have approached the Municipal Corporation and thereafter, T-RERA and they received same orders from both the forums. In this regard, learned counsel placed reliance on Civil Appeal No. 6936 / 2023 titled as M/S. KABRA AND ASSOCIATES & ORS. VERSUS REKHA RAJKUMAR HEMDEV & ORS. He, therefore submits before this Court that for the same cause of action simultaneous proceedings cannot be initiated and it also transpires from the counter affidavit of un-official respondent that the petitioners herein also filed execution proceedings before the T-RERA, which is suppressed by the petitioners herein. Thus, he urges before this Court as the writ itself is not maintainable, so the question of granting relief as sought by the petitioners herein is also against the rule of law.

[8] Heard and perused the evidence on record.

[9] Upon perusal and going through the records, this Court is of the opinion that the petitioners herein converted residential building into commercial purpose which is in contravention to the building construction and permission and as well contrary to deed of conveyance. According to this Court, it is meant for residential purpose but, the petitioners herein are running clinical laboratory and eye clinic in the ground floor which falls under commercial activity.

[10] This Court is also of the view that the petitioners have initiated parallel proceedings before TRERA and Agartala Municipal Corporation and obtained orders . It is also brought to the notice of this Court that they have also filed an execution proceeding before the TRERA prior to filing of this

petition and this fact is also suppressed by them. It transpires that they have not approached this Court with clear hands. This Court, accordingly draws the attention of the judgment and order placed by Mr. Arijit Bhaumik, learned counsel appearing for the respondents-Municipal Corporation, which is titled as M/S. KABRA AND ASSOCIATES & ORS. VERSUS REKHA RAJKUMAR HEMDEV & ORS, Civil Appeal No. 6936 / 2023 the relevant portion is extracted as under:-

“Given the aforesaid sequence of events, when it was open to the complainants to elect/opt for one or the other remedy that was available to them at that time and they made that choice by approaching the Authority under the provisions of the Act of 2016 in the first instance and then decided to withdraw their complaint, reserving liberty to once again file a fresh complaint before the Authority, they could not have retracted therefrom.

In this regard, the decision of 3-Judge Bench of this Court in Ireo Grace Realtech Private Limited vs. Abhishek Khanna and Other [(2021) 3 SCC 241] is relevant. It was observed therein that an election of a remedy arises when two concurrent remedies are available and the aggrieved party chooses to exercise one and, in that event, he loses the right to simultaneously exercise the other for the same cause of action. Though, the above observation posits that the aggrieved party choose one remedy or the other and not invoke both simultaneously, we may note that in this case the complainants chose to invoke the remedy available to them under the Act of 2016 and having done so, they withdrew the complaint filed by them before the Authority with liberty to file fresh complaint before said Authority. Having committed themselves in that regard, it was not open to them at that stage to opt for the other remedy available under the Consumer Protection Act, 2019.

[11] This Court further opines that the facility of a common toilet is a basic necessity and the same is in the ground floor which is used by the security persons, care taker, plumber, electricians and maid servants. Though, it is a case where the respondents Municipal Corporation and T-RERA could have looked into the ground reality and the locus of the complaints of the petitioners but, straightway they have proceeded against the respondent No.5 to demolish the construction.

[12] Since, the petitioners have created litigation as indicated from above, the same is also not tenable in the eye of law. Therefore, this Court directs the petitioners to pay a cost of Rs.10,000/- each (in all Rs. 40,000/-) to

the High Court Bar Associations within 01 month from today and obtain receipt. Mark a copy of this order to the President, High Court Bar Associations.

[13] For the above observation and direction, this Court is not inclined to grant relief as prayed for and the writ petition is liable to be dismissed. Accordingly, the same is dismissed.

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

DR. T. AMARNATH GOUD, J

Paritosh

