

08.12.2021
Court No. 19
Item no.03
CP

WPA 310 of 2020

Kapil Shaw
Vs.
The State of West Bengal & ors.

Mr. T. K. Chatterjee
Mr. Sanjoy Ghosh

.....for the petitioner.

Mr. Debasis Kar
Mr. Subhojit Chowdhury

....for the respondents 5, 6 & 7.

Mr. Syamal Kumar Das

.....for the respondents 2 & 3.

Affidavit of service is taken on record.

Fresh affidavit of service has been filed in order to show that as per the direction of this court a copy of the order dated November 30, 2021 was served upon the Titagarh Municipality. Despite service, none appears on behalf of the Titagarh Municipality. Hence, Mr. Syamal Kumar Das, learned advocate who usually appears on behalf of the Titagarh Municipality, is requested by the court to enter appearance in the matter. A copy of the writ petition has, accordingly, been served upon Mr. Das.

The petitioner claims to be the owners of Plot No. 221 pertaining to Khatian No. 881 of Mouza –

Titagarh under the Titagarh Municipality (hereinafter referred to as the Municipality). According to the petitioner, the respondents 5, 6 & 7 have constructed a concrete roof over the common passage unauthorizedly thereby transferring the same to be a personal property. Complaints have been lodged before the Municipality.

Mr. Kar, learned advocate appearing on behalf of the respondents 5, 6 and 7 submits that the title of the petitioner over the land in question is disputed and a civil suit was filed on the selfsame cause of action. The civil suit was registered as Title Suit No. 84 of 2003. According to him, the said suit was decreed on compromise and, therefore, this writ petition is not maintainable for two reasons, i.e., parallel proceedings cannot be continued on the selfsame cause of action and the civil suit was decreed on compromise. According to him, these facts have been suppressed and the writ petition should be dismissed in limine. He placed reliance on a decision of the Hon'ble Apex Court in the matter of M/s Prestige Lights Ltd. vs. State Bank of India, reported in (2007) 8 SCC 449.

According to Mr. Ghosh, learned advocate for the petitioner, he has not been informed about the said litigation by his client and, as such, such issues have not been disclosed in the writ petition.

This court is not inclined to pass any orders as prayed for in the writ petition as it is the duty of the Municipality to enquire and ensure that no unauthorized construction takes place. The allegation of the petitioner is that respondents 5 to 7 have constructed a roof over the common passage. The question of title, possession and/or encroachment shall not be gone into by the Municipality. The Municipality must dispose of the complaint of the petitioner by restricting its enquiry only to whether the alleged roof has been constructed in accordance with the plan or with any permission from the Municipality, or whether the roof which is allegedly a pucca construction, could have been built in the absence of a permission or sanction.

The Municipality will cause an inspection in the presence of the parties and pass a reasoned order intimating the same to the parties. The question of title, encroachment and possession are all matters which have been dealt with by the civil court and, neither this Court nor the Municipality is empowered by law to probe into such questions.

Once the inspection is held, a copy of the inspection report shall be submitted to the parties and, thereafter, upon hearing all the parties and allowing the parties to submit all documents in support of their contentions, a reasoned order shall

be passed and communicated to all and the proceedings shall be reached to its logical conclusion.

The court has not gone into the merits of the claims and counter-claims of the parties and the Municipality shall proceed independently.

The entire exercise shall be completed within a period of four months from the date of communication of this order.

The writ petition is thus disposed of. There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)