

30.11.2021
Court No. 19
Item no.17
CP

WPA 808 of 2020

Sri Binod Biswas
Vs.
The Chairman of Barasat Municipality & ors.

Mr. Syed Nasim Aejaaz

.....for the petitioner.

Mr. Suprio Roy Choudhury
Mr. Sankar Ghosh

.....for the respondents 1 & 2.

Mr. Shamim ul Bari

....for the respondents 3 & 4.

The petitioner is aggrieved by the notice of demolition dated December 23, 2019, issued by the Chairman, Barasat Municipality. By the said notice the petitioner was asked to vacate the portion of the land of one Joydeb Das which was occupied by the petitioner. It was further found that the construction thereon was unauthorized.

It is submitted by the petitioner that the direction upon the petitioner to vacate the portion of the land of respondent no. 3 was issued pursuant to a report filed by an Upper Division Clerk of Barasat Municipality who was allegedly assigned the job of demarcating the portions of land occupied by the petitioner and respondent no. 3. According to the petitioner, the Upper Division Clerk was not

authorized by law to decide the question of title and encroachment.

Mr. Bari, learned advocate appearing on behalf of the respondents 3 and 4, submits that allegations against the petitioner was encroachment and also unauthorized construction. He submits that the municipality has come to the conclusion that not only there has been encroachment but there has also been unauthorized construction.

Mr. Roy Choudhury, learned advocate appearing on behalf of the Barasat Municipality, submits that the question of title and encroachment shall not be gone into by the municipality but the municipality is empowered by law to take all steps against any illegal and unauthorized construction.

On a query from the court whether the petitioner can produce any permission or sanction granted by the municipality with regard to the construction made by the petitioner, the petitioner was unable to produce any such documents.

The writ petition is disposed of with a direction upon the competent authority of the Barasat Municipality to cause an inspection of the premises in question through a Sub-Assistant Engineer to point out the unauthorized portions to the petitioner which the petitioner has allegedly constructed without any permission.

The inspection shall be held in the presence of the petitioner as also the respondents 3 and 4. The municipal authorities shall take the assistance of an Amin at the time of inspection for demarcation of boundary. A prior notice of inspection shall be given to the parties.

However, with regard to the unauthorized construction, if it is found that the petitioner does not have any plan or permission, the municipality will take immediate steps upon giving one last opportunity to the petitioner to produce documents in favour of such construction and make submissions.

A reasoned order shall be passed and communicated to all. The extent of unauthorized construction shall be indicated in the order and, thereafter, the said proceeding shall be reached to its final conclusion.

It is made clear that any such demarcation of boundaries shall not be taken as a decision on the title of the parties and the parties are at liberty to proceed under the provisions of law for declaration of their respective titles and other reliefs. The boundary dispute shall not be decided in this proceeding. The demarcation will be made only for the purpose of measuring the alleged unauthorized portion of the structures.

The entire exercise shall be completed within a period of two 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.)