

16.09.2021
Sl. No.8
srm

W.P.A. No. 2386 of 2021

Nityananda Das
Vs.
The State of West Bengal & Ors.

Mr. Kingsuk Mondal,
Mr. Pradip Kumar Kundu
...for the Petitioner.

Mr. Ashis Guha,
Mr. N. Ghosh Dostidar
...for the State.

Mr. Neil Basu,
Mr. Rahul Kumar Singh,
Mr. Kausik Ray,
Mr. Sujoy Naskar
...for the Municipality/Respondent No.2.

The petitioner files the affidavit-of-service pursuant to the direction of this Court, which is taken on record. Fresh service was sought to be effected upon the respondent No.5 as also the Budge Budge Municipality. Postal receipt shows that the respondent No.5 refused the service. The municipality is represented.

The matter is taken up in the absence of the respondent No.5.

It is submitted by the petitioner that upon receipt of the copy of the writ petition the competent authority of the Budge Budge Municipality conducted an inspection on January 22, 2021 in presence of the parties.

The inspection report filed before this Court by the learned Advocate for the municipality is taken on record. It appears that the building alleged to be unauthorised is a small hut existing for over 80 years. Pictures have been annexed. No new construction has been found and the construction is pre-existing, since before the promulgation of the said Act and Rules, is an old dilapidated building where the respondent No.5 resides.

The allegation of the petitioner is that the *varandah* encroaches into the municipal road and no ambulance can ply in the said area.

The Court is satisfied with the preliminary findings of the municipality that the house has been existing prior to the coming into force of the building rules. There has never been any complaint from any person in the locality with regard to the alleged encroachment of the municipal road and lack of space for plying of vehicles. It is also not clear whether a road exists at all. It appears that the alleged road is a passage between the houses in an old locality. It is the contention of the municipality that the present Building Rules shall not be applicable in case of such old dwelling houses.

Under such circumstances, this writ petition is disposed of without any order. However, if the petitioner makes a representation with regard to the issue as to whether an

arrangement may be made so that the ambulance may ply in the area without any hindrance, the municipality shall pass a reasoned order in accordance with law upon hearing the petitioner as also the respondent No.5 within a period of eight weeks from the date of receipt of the representation of the petitioner. Whether there is a municipal pucca road and whether there is any encroachment onto the road shall be decided by the municipality.

The allegation with regard to the ambulance not being able to enter the area is not a part of the pleading in the writ petition and as such no mandatory order can be passed.

There will be no order as to costs.

All parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)