

25.11.2021  
Court No. 19  
Items No.10  
CP

WPA 3452 of 2020

Rezia Bibi & anr.  
Vs.  
The State of West Bengal & ors.

Md. Younush Mondal

.....for the petitioners.

Mr. Suprio Ray Choudhury  
Mr. Sankar Ghosh

...for the respondent no.3.

Mr. R.P. Motilal  
Mr. Pabitra Biswas

...for the respondent no. 7.

Mr. Santanu Kr. Mitra  
Mr. M. Choudhury

....for the State.

On the last occasion, the court recorded that in a proceeding before the learned Executive Magistrate, Barasat (Sadar), a report had been filed from which it appears that there has been deviation in the construction made by the respondent No. 7, from the sanction plan.

The dispute relates to Premises No. 47/1/2, Ekdilshah Road under the Barasat Municipality. The court had adjourned the matter for appearance of the learned advocate for the Barasat Municipality and also in order to enable the respondent no. 7 to come back with proper instructions.

Today, the sanctioned building plan and the occupancy certificate granted by the Chairman, Barasat Municipality have been handed over to the court. It appears that on January 20, 2020, the Chairman, Barasat Municipality has issued the occupancy certificate to one Abdul Khaleque, i.e. the respondent no. 7. It is submitted by respondent no. 7 that had there been any unauthorized construction, the occupancy certificate would not have been granted. The occupancy certificate is granted in compliance of the West Bengal Municipal (Building) Rules. The Rules provide that only if the construction is according to the sanction plan, the occupancy certificate can be granted.

Reliance is also placed on an order of the Sessions Judge, North 24 Parganas, Barasat from which it appears that the order passed by the Executive Magistrate directing the Chairman of the Barasat Municipality to take action with regard to the construction as per law, had been stayed. These orders have been passed prior to the issuance of the occupancy certificate. Thus, it is submitted by the petitioners that the report before the learned Executive Magistrate and the stop work order passed by the Chairman have lost significance in view of the subsequent issuance of the occupancy certificate.

Section 34 of the West Bengal Municipal (Building) Rules, 2007 is set out below for convenience:

**“34. Occupancy certificate.—**

(1) Within fifteen days of receipt of the notice of completion of building or work, the Board of Councillors or the authorised representative in this behalf shall inspect the building or work and shall satisfy itself or himself that the erection of the building or the execution of the work has been done in accordance with the sanctioned plan.

(2) Within fifteen days from inspection, the Board of Councillors shall, if it is satisfied that the building or the work has been completed in accordance with the sanctioned plan, issue an occupancy certificate, in Form 'H':

Provided that such certificate shall not be issued in the case of a building or any work for which provisional sanction was given unless the applicant produces before the Chairman the license or permission required for sanctioned for construction of building:

Provided further that the occupancy certificate shall be issued only after all the extra materials like sand, boulders, stone chips, cement, steel, bamboo, timber, lying on the public road have been removed by owner and the damages to public property, if any, has been made good by the owner with his own cost to the entire satisfaction of the Board of Councillors.

(3) After due verification, one set of the building plan shall be returned to the applicant with the endorsement of approved completion plan under the signature of the Chairman or an officer authorised in this behalf.

(4) \*\*\*\*\*

(5) In a case where the occupancy certificate is refused, the Board of Councillors shall communicate the reasons in writing, to the applicant within thirty days from the date of receipt of the notice of completion of the work.

(6) In case where, in the opinion of the Board of Councillors, the building or the work has not been completed in accordance with the sanctioned plan, it may take necessary action in accordance with the provisions of the Act and these rules.

(7) The Board of Councillors shall not permit connections to be made to municipal water mains and municipal drains, - from any new

building in respect of which occupancy certificate has not been issued:

Provided that the Board of Councillors may permit connections to be made in respect of a building where Partial Occupancy Certificate or Block wise Occupancy Certificate has been issued as per provision of rules 34A and 34B:

Provided further that the Board of Councillors may order disconnection of such connections if he is of the opinion that the conditions of the Partial Occupancy Certificate or Block wise Occupancy Certificate are being violated or if further erection of the building or execution of the work each proceeding contrary to the sanctioned plans.

(8) The Board of Councillors shall not permit connections to be made to municipal water mains, if any, from any new building in respect of which water connection fee, as may be specified by the Board of Councillors under the relevant rules, has not been paid in advance.

(9) Tolerance Limit for architectural measurement before or after finishing works on the outer face of the wall at the ground floor level shall be 50 mm.”

A reading of the said Rules will indicate that until and unless the Board of Councillors is satisfied with the criterion stated thereunder have been fulfilled, an occupancy certificate cannot be granted. The respondent No. 7 has been granted such certificate in respect of the said premises and the purchasers of the flats have already taken possession.

Having heard the learned advocates for the respective parties, this court is of the opinion that if the petitioners raise any dispute by specifically mentioning the nature of unauthorized construction before the Barasat Municipality, then the said objection of the petitioners shall be disposed of in accordance with law upon hearing the petitioners as

also the respondent no. 7 and the other occupants of the building.

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.)**