

25.11.2021
Sl. No.6
srm

W.P.A. No. 5164 of 2021

Sri Sumit Kumar Dey & Ors.

Vs.

The State of West Bengal & Ors.

Mr. Sudipta Dasgupta,
Mr. Arkadeb Biswas

...for the Petitioners.

Mr. Ashish Kumar Guha,
Mr. Naren Ghosh Dastidar

...for the State-respondents.

Mr. Suman Basu

...for the Chandernagore
Municipal Corporation.

Mr. Noni Gopal Chkraborty

...for the Respondent No.8.

Exception to the report has been filed by the respondent No.8 and the same is taken on kept on record.

The petitioners are the flat owners at a premises, named and styled as "Maa Sarada Apartment", Bagbazar, Kalibari More, R.B. avenue, under the Chandernagore Municipal Corporation. The petitioners have alleged that the respondent No.8 has been running a shop from the said premises since long with the permission of the landlord but after the premises was developed, the shop was extended without any permission from the Chandernagore Municipal Corporation.

The primary contention of the petitioners is that such unauthorised extension of the shop room has caused difficulty in the ingress and egress of the flat owners. The corporation was directed by this Court to make an inspection with regard to the alleged contentions of the petitioners. The inspection was held by the corporation in the presence of the parties and the corporation has filed a report from which it *prima facie* appears that there have been some unauthorised constructions. Such construction has been made in the South-West corner of the apartment.

Mr. Chakraborty, learned Advocate appearing on behalf of the respondent No.8, submits that the tea shop has been running for the last 30 years. The flat owners did not raise any objection when the flat was being constructed. It is further stated that the corporation had itself passed an order sometime in 2020 to the effect that the dispute between the parties over encroachment was a civil dispute and the corporation had already closed the chapter, which cannot be reopened now by filing the writ petition.

Learned Advocate for the Chandernagore Municipal Corporation submits that the shop room is unauthorised. Neither any trade licence nor any certificate of enlistment has been granted by the corporation for such shop room.

As the grievance of the petitioners has been addressed to the extent that the corporation has already taken cognizance of the complaint lodged by the petitioners, nothing further remains to be decided in the writ petition.

From the exceptions filed by the respondent No.8, it does not appear that the contentions of the corporation have been proved to be incorrect. These are all *prima facie* observations.

The corporation is directed to make a fresh inspection in the presence of all the parties. A copy of the inspection report shall be supplied to the respective parties. On the basis of what transpires at the inspection, a hearing shall be given to the petitioners as also the respondent No.8 and a reasoned order shall be passed and communicated to all concerned. Needless to mention that the corporation shall reach the proceedings to its logical conclusion.

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

It is categorically stated that the corporation shall only look into the question as to whether the shop has been constructed and is running contrary to the provisions of law. The question of encroachment, etc. shall not be gone into by the corporation as these disputes are to be decided in a civil suit.

At the hearing, the respondent No.8 shall be entitled to submit all documents in support of his contentions and will also be permitted to produce additional evidence in order to demonstrate that similar shops are being operated by the persons in or around the locality under the Chandernagore Municipal Corporation without valid trade licence and without valid permission as alleged by Mr. Chakraborty.

This Court has not gone into the merits of the claims and counter-claims of the parties and all points will be decided by the corporation.

This writ petition is, thus, disposed of.

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.)