

17.11.2021
Sl. No.3
srm

W.P.A. No. 6672 of 2021
Sri Jayanta Laha & Anr.
Vs.
The State of West Bengal & Ors.

Mr. Swapan Kumar Nandi,
Mr. Sibnarayan Chattopadhyay
...for the Petitioners.

Mrs. Sipra Majumdar,
Mrs. Pratima Ghatak
...for the State-respondents.

Mr. Gautam Lahiri
...for the Serampore Municipality.

Mr. Prashanta Kumar Banerjee
...for the Respondent No.8.

Affidavit of service is taken on record.

The writ petition has been filed alleging unauthorised construction at Premises No.22/1, Dr. P.N. Mukherjee Street, Chatra, Serampore, Hooghly. The learned Advocate for the petitioners submit that the Sub-Assistant Engineer of the Serampore Municipality had already inspected the premises pursuant to a complaint and the Chairman of the Municipality had issued a notice dated September 16, 2019 to the respondent No.8 to appear before the authority with documentary evidence in favour of such construction. It has further been alleged that as per the notice issued by the Chairman of the Municipality, the toilet and a bathroom

thereon has been constructed by encroachment of a portion of the house of the petitioners.

Mr. Lahiri, learned Advocate appearing on behalf of the Serampore Municipality, submits that a second notice has already been served upon the respondent No.8 on November 16, 2021 requiring the said respondent to answer as to why steps shall not be taken for demolition of the construction.

Mr. Banerjee, learned Advocate appearing on behalf of the respondent No.8, submits that the said toilet had been constructed long before and the petitioners subsequently purchased the adjoining property and have raised objection. That the construction of the toilet was in accordance with the permission given by the municipality and the question of encroachment cannot be gone into by the municipality.

This Court is in agreement with the contention of Mr. Banerjee to the extent that that the question of title, possession and encroachment are not to be decided by the municipality. However, if the municipality finds that a construction has been made without a sanction plan which has also encroached into another premises, the municipality has the jurisdiction under the law to take steps against such unauthorised construction.

The Inspector-in-Charge of the Serampore Police Station has already filed a report from which it appears that there has been a long standing dispute between the parties.

As the municipality has already decided to initiate proceedings under Section 218 of the West Bengal Municipal Act, 1993, this Court is of the opinion that the writ petition must be disposed of with the following directions upon the municipality:

- (a) The competent authority of the municipality shall cause an inspection afresh of the premises in question in presence of both the parties; Copies of the inspection report be supplied to the parties.
- (b) The parties shall be entitled to file their written submission before the authority and deal with all the questions which are to be raised in the proceeding;
- (c) The parties shall also be at liberty to submit oral evidence and produce documentary evidence in support of their contentions;
- (d) Upon hearing the parties, a reasoned order shall be passed and communicated to all concerned.
- (e) On the basis of what transpires at the hearing and during the inspection, the municipality shall take necessary steps and reach the proceedings to its logical conclusion as per law.

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

This Court has not gone into the merits of the claims and counter-claims of the parties and the entire issue shall be decided by the municipality independently.

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.)