

28.9.2021
Court No. 19
Item no.18
sn

WPA No. 8034 of 2021

Sri Raj Narayan Rai Vs. Kamarhati
Municipality & Ors.

(via video conference)

Mr. Kushal Chatterjee
Mr. Debabrata Roy
..for the petitioner
Mr. Abhishek Sarkar
Ms. A. Bera Maity
..for the respondent no.5

Despite service, none appears on behalf of the Kamarhati Municipality. The affidavit of service is taken on record.

The petitioner has alleged illegal and unauthorized construction by the respondent no.5 on premises no. 6/56, M.M. Feeder Road, Belghoria, Kolkata 700057.

It is contended by the petitioner that the respondent no.5 without any authority and without any sanction plan has been raising a construction on the said property. Reliance is placed on a communication from the municipality under the Right to Information Act, 2005, from which it appears that no sanction plan has been granted for any new construction.

Mr. Sarkar, learned advocate for the respondent no.5 submits that the petitioner and the respondent no.5 are brothers. That a suit for eviction

has been filed by the petitioner against the respondent no.5 and in the suit an order of status quo has been passed with regard to the entire suit property as it stood on that date in a misc appeal. The appeal is pending final disposal and this Court is of the opinion that as there is an order of status quo in respect of the entire suit property as it stood on that date, further direction upon the municipality to deal with the construction allegedly made by the respondent no.5 would amount to modification of the order passed in the misc. appeal.

The petitioner is entitled to approach the civil court for disposal of the appeal and also for clarification of the order on the ground alleged in the writ petition. If such application is filed before the civil court, the same shall be disposed of upon granting an opportunity of hearing to all the parties. It is also submitted that after the order has been passed in the Misc. Appeal, some unauthorised construction has been raised. The lower appellate court shall also deal with such contention in accordance with law.

In view of the order of the civil court, the writ petition cannot be entertained at this stage. The question of unauthorized construction has not been decided here and the point is kept open.

This writ petition is disposed of.

There will be, however, no order as to costs.

Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)