

20.07.2021
Court No. 19
Item no.7
sn

WPA No. 10336 of 2021

CHANDAN PAL & ANR. VS. THE HOWRAH
MUNICIPAL CORPORATION & ORS.

(via video conference)

Mr. Srijib Chakraborty
Mr. Subhasis Chakraborty
Mr. Amit Chowdhury
Ms. S.K. Singh
...for the petitioners
Mr. Himadri Sekhar Chakraborty
Ms. Debdooti Dutta ..for the State

Mr. Tanmoy Mukherjee
Mr. Souvik Das
..for the respondent no.6
Mr. Sandipan Banerjee
..for the H.M.C.

Let the affidavit of service be taken on record.

This writ petition has been filed challenging inaction on the part of the Howrah Municipal Corporation in disposing of the complaint lodged by the petitioners alleging unauthorized construction at the instance of the respondent no.6.

The petitioners and the respondent nos. 7&8 claim to be the co-owners in respect of the property in question, in which the alleged unauthorized construction is going on.

The disputed property measures about 0.0309 acres and is situated in Mouza Malipanchghora, J.L. No.1, R.S & L.R. Dag Nos. 66, Khaitan No. 39, L.R. Khaitan No. 177, comprised within Ward No.1 of

Howrah Municipal Corporation being premises no. 26, Naskar Para Road, P.S. Malipanchghora, P.O. Salkia, District Howrah 711 101.

It is the contention of the petitioners that the respondent no.6 constructed the building unauthorisedly, in the absence of a sanction plan.

Mr. Banerjee, learned Advocate for the Howrah Municipal Corporation submits that there is a long-standing civil dispute between the parties and the petitioner has also initiated a proceeding under Section 144(2) of the Code of Criminal Procedure. That the writ petition is not maintainable.

Mr. Tanmoy Mukherjee, learned Advocate appearing for the respondent no.6 submits that the respondent no.6 acquired title in respect of the property in question on the basis of the Will of the erstwhile owner. The Will has been probated. That the land being a thika land, permission has been taken from the Thika Controller and the Howrah Municipal Corporation has also granted a sanction to the building plan.

This Court cannot decide the title of neither the petitioners nor the respondents No. 7, 8 and 6. The question of trespass or encroachment are also not issues to be decided in this proceeding.

The Howrah Municipal Corporation also cannot decide the question of title, and encroachment.

However, it is the Corporation which should prevent any unauthorized construction. In this case, there is an allegation of unauthorized construction.

The competent authority of the Howrah Municipal Corporation shall dispose of the representation of the petitioners made through his learned Advocate, being Annexure P/6 to the writ petition, in accordance with law and upon hearing the parties.

The inspection, if any, of the premises in question shall be held in the presence of the parties. The report of the inspection shall be handed over to the respective parties.

The Howrah Municipal Corporation shall reach the entire proceeding to its logical conclusion in accordance with law following the procedures laid down and upon observing the principles of natural justice.

This Court has not gone into the merits of the claim of the petitioners and the competent authority of the Howrah Municipal Corporation shall decide the issue independently. It is also open for the Howrah Municipal Corporation to take such interim measures as may be necessary on the basis of the inspection. The entire exercise should be completed within 12 weeks.

This writ petition is thus 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.)