

04.10.2021
Court No. 19
Item no.03
CP

WPA 14916 of 2021

Sk. Dil Shad
vs.
The State of West Bengal & ors.

Mr. Samim Ahammed
Mr. Arka Maiti
Ms. Saloni Bhattacharjee
Ms. G. Pervin

....for the petitioner.

Mr. Dwaipayan Basu Mallick
Mr. Arkaprava Sen
Ms. Sudeshna Mazumder

....for the municipality.

Mr. Malay Kumar Singh
Ms. S. Saha

....for the State respondents.

Mr. Rajdeep Bhattacharya

....for the respondent no. 7.

The writ petition has been filed challenging an order of demolition passed by the appropriate authority of the Basirhat Municipality.

The writ petition was admitted on a limited question of violation of the principles of natural justice.

It was the specific grievance of the petitioner that the order of demolition was passed without complying with the principles of natural justice.

Learned advocate for the municipality appears before this court and refers to paragraph 16 of the writ petition. It has been pleaded that a hearing was given to the petitioner. The petitioner's representative appeared before the authority.

Thus the question of violation of the principles of natural justice thus does not exist. As such, in the opinion of the court the writ petition is not maintainable in view of the alternative remedy by way of an appeal under the law.

Mr. Ahammed, learned advocate appearing on behalf of the petitioner, submits that the order is completely without jurisdiction and suffers from misconception of law, inasmuch as, the question of possession, title, encroachment etc. cannot be looked into by the Special Officer (Building).

It is true that the municipal authorities cannot decide the question of title. However, it is not for this court to decide whether in the order impugned, the authority has actually ventured into deciding the question of title or encroachment. Such question is also left open to be decided by the appropriate appellate forum along with all other points.

The writ petition is disposed of with a direction upon the petitioner to prefer an appeal in accordance with the provisions of the West Bengal Municipal Act,

1993. All points including the point of jurisdiction is left open to be decided by the appellate authority.

The petitioner will also be entitled to pray for stay of the order impugned, which shall be decided in accordance with law on the basis of the prima facie case, upon hearing the parties.

The order of demolition shall remain stayed for a period of eight weeks from date. If the petitioner is not favoured with any order within that period, then the municipality shall act and proceed in accordance with law.

If the petitioner has not received any certified copy of the order of demolition, then the petitioner shall be at liberty to move the appellate forum on the basis of the photocopy of the decision/communication received from the municipality with an undertaking that as and when the certified copy of the order is received, the same shall be filed before the appellate authority.

This court has not gone into the claims and counter-claims of the parties and the appellate authority shall decide all the issues independently.

This writ petition is, thus, disposed of. There will be, however, no order as to costs.

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

(Shampa Sarkar, J.)