

09.12.2021
Court No. 19
Item no.14
sn

WPA 15060 of 2021

Smt. Gopali Ghosh
Vs.
The State of West Bengal & ors.

Mr. Kalyan Kumar Chakraborty
Mr. Kashinath Bhattacharyya
Mr. Somenath Bhattacharyya
Mr. Ashok Halder
Ms. Anjana Mehebab
Mr. Sunayan Ghosh
....for the petitioner.

Mr. Biswajit De
Ms. Rajlakshmi Ghatak
....for the State.

Mr. Partha Ghosh
Mr. Amal Kumar Datta
..for the respdts. 8&9

Mr.Ghosh, learned advocate for the respondent nos. 8&9 raises the point of maintainability of the writ petition on the ground that alleging unauthorized construction by the respondent nos. 8&9, a suit was filed before the learned Civil Judge(Junior Division) Balurghat, Dakshin Dinajpur. The said suit was registered as O.C.No. 22 of 2020. The said suit was withdrawn by the petitioner seeking liberty of the Court to file afresh before the High Court, on the self same cause of action.

The learned Civil Judge(Junior Division) Balurghat, Dakshin Dinajpur allowed the withdrawal of the suit, without liberty to file a fresh suit on the

self same cause of action. The suit was dismissed for non-prosecution. According to Mr. Ghosh, the writ petition is not maintainable as it is barred by the principles of *res judicata*.

From the application for withdrawal of the suit, it appears that the petitioner had mentioned that as the suit court could not grant any relief to the petitioner, the petitioner desired to withdraw the suit and move the High Court by filing a writ petition and pursue the alternative remedy available under the law. According to Mr. Ghosh, when the learned Civil Judge (Junior Division) Balurghat, Dakshin Dinajpur had denied the liberty to file a fresh suit on the self same cause of action, this writ petition cannot be entertained.

From the order passed by the learned Civil Judge(Junior Division) Balurghat, Dakshin Dinajpur, it appears that liberty was not granted to file a fresh suit on the self same cause of action but the learned Civil Judge(Junior Division) Balurghat, Dakshin Dinajpur did not pass any order with regard to the plea of the petitioner to approach the High Court by filing a writ petition for seeking alternative remedies available under the law. In any event, the learned Civil Judge(Junior Division) Balurghat, Dakshin Dinajpur could not have prevented a party from filing a writ petition under Article 226 of the Constitution

of India. The petitioner having found that the remedies under the municipal law as prayed for with regard to unauthorized construction and consequential demolition was not available in a civil suit, withdrew the suit to approach the High Court. The writ petition is not barred, as the issues were not decided by the Civil Court on merits. The other contention of Mr. Ghosh is correct that the factum of withdrawal of the suit ought to have been mentioned in the writ petition. For such suppression, the petitioner is directed to deposit cost of Rs.500/- (Rupees Five Hundred) only in favour of the Legal Aid Services, High Court, Calcutta.

Despite service, none appears on behalf of the Balurghat Municipality.

This is an allegation of unauthorized construction against the respondent nos. 8&9 over plot L.R. No. 997, Mouza Baro Raghunathpur, P.S. Balurghat, District Dakshin Dinajpur.

The petitioner relies on a notice dated October 30, 2020, from which it appears that the respondent nos. 8&9 had been issued a 'stop work' notice by the Chairperson, Board of Administrator, Balurghat Municipality.

It is submitted by the petitioner that pursuant to the said notices, the municipality ought to have initiated a proceeding in terms of Section 218 of the

West Bengal Municipal Act, 1993 but the same was not done. It is also submitted by him that rampant construction is going on without any sanction plan.

Mr. Ghosh, learned advocate appearing on behalf of the respondent nos. 8&9 denies the allegation that the construction has been made without a sanction plan. As these are disputed issues which have decided by the concerned municipality, this Court is of the opinion that the writ petition should be disposed of directing the competent authority of the Balurghat municipality to act and proceed in accordance with law.

The municipality shall proceed in the following manner :-

- a) An inspection of the premises shall be made. Such inspection shall be held in the presence of the parties, with 48 hours advance notice.
- b) The report of the inspection shall be prepared and supplied to the parties.
- c) A hearing shall be given to the parties. The parties must also be allowed to make oral submissions as also adduce evidence in support of their contentions.
- d) A reasoned order shall be passed and communicated to the parties. On the basis of what transpires at the hearing and

during inspection. The proceedings shall be reached to its logical conclusion.

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

The writ petition is, thus, disposed of.

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

(Shampa Sarkar, J.)