

S/L 4
07.10.2021
Court. No. 19
GB

WPA 15625 of 2021

Shri Nirmal Singha & Anr.
Vs.
The State of West Bengal & Ors.

(Through Video Conference)

*Md. Sarwar Jahan,
Mr. Maidul Islam Kayal.*

...for the Petitioners.

*Mr. Moloy Krishna De,
Mrs. Ujani Pal (Samanta).*

...for the State.

*Mr. Kushal Chatterjee,
Mr. Debabrata Ray.*

...for the Respondent No.9.

Mr. Soumyajit Bhatta.

...for the Respondent Nos.2 to 6.

The petitioners have alleged unauthorized construction by the respondent nos.9 to 17. Respondent no.9 is the developer. Respondent nos.10 to 17 are the owners of the said plot of land. It has been alleged that some unauthorized construction has been going on, on holding no.174, Ghoshpara, T.N. Banerjee Road, P.O. Panihati, P.S. Khardan, Kolkata – 700114.

It is the contention of the petitioners that despite there being complaint before the Panihati Municipality, no steps have been taken with regard to such unauthorized construction.

Mr. Chatterjee, learned advocate appearing on behalf of the respondent no.9 submits that the proceeding between

the petitioners and the respondent no.9, initiated before the District Consumer Disputes Redressal Commission, 24 Parganas (North), Barasat, ended in a compromise. Thus, according to Mr. Chatterjee, this Court should not entertain the writ petition in view of the compromise entered into between the parties.

Mr. Bhatta, learned advocate appearing on behalf of the municipality submits that an inspection was made and unauthorized construction has been detected.

The first contention of Mr. Chatterjee is not accepted by the Court. The proceeding before the Consumer Forum was with regard to the deficiency of service given by the petitioners to the land owners. The land owners had engaged the petitioners as the developers. Such order of compromise does not stand in the way for the Court and the municipality to proceed in accordance with law, against any unauthorized construction. The next contention of Mr. Chatterjee that the municipality had not intimated the developer while making an inspection is taken note of.

As the municipality has already detected some unauthorized construction, this Court is of the opinion that the matter should be disposed of thereby directing the municipality to cause a further inspection in presence of all the interested parties, upon giving them advance notice. A notice shall also be pasted at the premises, in case of either refusal or absence of such persons at the time of delivery of the notice. The inspection to be held in the presence of the

parties, shall culminate in a report with a sketch map of the unauthorized structures. Copies of the same shall be supplied to all the parties. The parties shall be allowed to file their written version along with supporting documents with regard to such inspection. The parties will be heard. Legal representation will be allowed at the hearing and final order shall be passed and communicated to all concerned.

This Court is not going into the merits and the demerits of the claims and counter-claims of the parties. The municipal authorities shall act and proceed on the basis of the documents, records and submissions and thereafter takes such steps as may be required by the law.

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

It is made clear that the municipal authorities shall restrict their enquiry and the proceeding, to the allegation of unauthorized construction, that is, whether there has been any construction without a plan or in deviation of a plan. The question of title, encroachment are matters to be decided in a separate proceeding and the municipality shall not enter into such questions.

This order shall not prevent the municipality from taking measurements of the unauthorized construction even if such measurement is to be made from the land of the respondent Nos. 9 to 17. It is also made clear that the municipality shall be at liberty to take interim measures, if necessary, in accordance with law.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

All the parties are direct to act on the basis of the learned advocate's communication.

(Shampa Sarkar, J.)