

06.12.2021
Sl. No.9
srn

W.P.A. No. 16992 of 2019
Nakul Mondal
Vs.
The State of West Bengal & Ors.

Mr. Joyak Gupta,
Mrs. Prativa Ghatak
...for the Petitioner.

Mr. Sanjay Ghosh
...for the Old Malda Municipality.

Mrs. Anwari Quraishi,
Mrs. Zainab Tahur
...for the State-respondents.

On an earlier occasion, the petitioner was directed to serve copy of the writ petition upon the Old Malda Municipality as also the respondent Nos.6 to 11.

Affidavit-of-service is taken on record. The track report shows that the respondent Nos.6 to 11 have refused the postal article and the articles have returned to the G.P.O., Kolkata. Refusal of service is treated as good service.

The petitioner has alleged that the respondent Nos.6 to 11 have raised an illegal construction on a portion of Dag No.1738 of Mouza Mangalbari Samundai, J.L. No.105 pertaining to Khatian No.386, which allegedly belongs to the petitioner. According to the petitioner, the said respondents have forcefully entered into the land of the petitioner and have raised construction without any sanction plan.

Mr. Gupta, learned Advocate appearing on behalf of the petitioner, relies on an order passed by a co-ordinate Bench of this Court in the matter of Nakul Mondal vs. The State of West Bengal [In Re: W.P. No.13499 (W) of 2019] and prays for similar order.

Mr. Gupta, submits, that in an earlier writ petition [W.P. 20759 (W) of 2014] by an order dated 31st July, 2014, this court directed the municipality to dispose of the representations annexed to the writ petition, upon hearing the petitioner, the respondent No.3 and the respondents Nos.6 to 11. Further direction was passed to the effect that in case unauthorised construction is detected, the municipality shall take necessary steps for demolition of the same in accordance with law. He submits that the impugned order dated 6th September, 2014 was passed purportedly in compliance of said order dated 31st July, 2014. He submits that the order should be set aside as the municipality did not decide the issue of unauthorized construction but instead decided the title of the petitioner and the nature of possession of the respondents Nos.6 to 12. He points out to the relevant portion of the order impugned, which is set out below:

“The occupiers are landless daily laborers and they have on other land to reside. As the respondents have been occupying and residing on the suit plots of land by making dwelling house of brick made for their families for more than twenty years last, so they are entitled to get night (sic.

right), possession & title over the land in question according to the article to the constitution of India but it solely relates to the discretion of the Hon'ble Court.

In view of the above findings, I am in the opinion that on humanitarian ground the petition filed by writ petitioner, Nakul Mondal for demolishing the construction if any, could not be considered."

Mr. Ghosh, learned advocate appears on behalf of the Old Malda Municipality and on query from the Court he submits that the respondents No.6 to 11 have been in settled possession of the land much before the petitioner acquired the land.

In spite of direction by order dated 31st July, 2014, the petitioner's representation was not considered. As such, the impugned order is set aside.

The municipality will apply its mind to the question as to whether or not construction existing in the address is legal or illegal? It is neither for the municipality nor for this Court to decide the title of the petitioner or the right, title, interest and nature of possession of the respondent Nos.6 to 11. The remedy of the petitioner against such respondents on the allegation of encroachment and threat to title, are before the learned Civil Court. The nature of occupation and title of the respondent Nos.6 to 11 are also to be decided by the Civil Court. The enquiry of the municipality shall be restricted to the question as to whether constructions complained of are

authorized by law or not. While disposing of the said representation of the petitioner, the municipality will hold an inspection on the premises in question in the presence of the petitioner as also the respondent Nos.6 to 11. A report shall be prepared. A copy of the report shall be handed over to the parties. Thereafter, the parties shall be allowed to file their written versions in respect of the report in question along with supporting documents. Upon hearing both the parties, the municipality shall pass a reasoned order which shall be communicated to all concerned.

In the event unauthorised construction is found, proceedings are to be initiated regarding demolition of it. The entire exercise shall be completed within four months from the date of communication of this order.

The order shall not be construed as a direction upon the municipality to evict the occupiers by removing them from their lands in question but this is a direction to comply with an earlier order of this court with regard to the direction upon the municipality not to permit any unauthorized constructions.

The writ petition is disposed of.

There will be no order as to costs.

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

(Shampa Sarkar, J.)