

22.03.2021
Sl. No.11
(PP)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE
(Via Video Conference)

WPA 9066 of 2020

**Sri Nitya Gopal Debnath & Anr.
Vs.
State of West Bengal & Ors.**

Mr. Ashim Kumar Routh
....for the petitioners.

Ms. Chama Mookherji,
Ms. Monika Pandit
....for the State.

Ms. Soma Mal
....for the private respondents.

The matter appears to have a chequered history. This is the third round of litigation *inter se* between the parties and/or their predecessors-in-interest. In the first writ petition, being W.P. 2798 (W) of 2014, was filed by Sushma Construction & Development Private Limited (hereinafter referred to as Sushma) from whom the petitioners claim to have purchased the property. In the said writ petition by an order dated 25th April, 2014, the application of Sushma dated 13th June, 2012 was directed to be disposed of by the Board of Councillors, Rajarhat-Gopalpur Municipality by passing a reasoned order in accordance with the provisions contained in the West Bengal Municipal Act, 1993 and in particular Sections 323 and 327 thereof within 8 weeks from the

date of presentation of the certified copy of the said order. Before the Board of Councillors, Rajarhat-Gopalpur Municipality could dispose of the matter, the said Municipality merged with the Bidhannagar Municipal Corporation. The second writ petition, being W.P. 20604 (W) of 2017 also by Sushma. It was disposed of by permitting the petitioners to make a comprehensive representation/application before the Municipal Commissioner, Bidhannagar Municipal Corporation within a week from the date of the said order and also directed the said Municipal Corporation to consider and dispose of the petitioners' representation within four weeks after affording the parties an opportunity of hearing. Bidhannagar Municipal Corporation by an order communicated on 17th June, 2019 disposed of the representation of Sushma giving certain directions. It appears the property sought to be demolished by Sushma is a joint property in a part whereof the respondent nos.9 and 10 reside. Bidhannagar Municipal Corporation was of the view that demolishing the structure on a part of the property is likely to cause damage to the other part, the structure being interconnected and as such, reasonable care while demolition was required to be taken.

The respondent nos.9 and 10 in the instant writ petition, had approached this Court by filing a writ

petition, being W.P. 19601 (W) of 2019, which was disposed of directing the police to ensure that no breach of peace occurs in the locale and a report was directed to be filed with regard to the complaint dated September 6, 2019. The said writ petition though was made returnable on 25th November, 2019 it is not clear as to the present fate of the same.

The petitioners say that all on a sudden, the petitioners received a notice dated 16th October, 2020 from the Bidhannagar Municipal Corporation directing the petitioners to ensure that the demolition operation undertaken by the petitioners must not affect/damage the remaining structure and adjacent building. The petitioners made a representation as against the direction contained in the letter dated 16th October, 2020 to Bidhannagar Municipal Corporation with a copy to the Commissioner of Police, Bidhannagar and the Officer-in-Charge, Baguiati Police Station on 19th the October, 2019. The petitioners say that the said complaint dated 19th October, 2020 still remains pending and as such, the police did not act as required, which gives rise to police action.

On behalf of the State, it is submitted that no specific complaint has been made to the police authorities. The letter dated 19th October, 2020 is addressed to the Executive Engineer, Bidhannagar

Municipal Corporation and a copy was only marked to the Commissioner of Police, Biddhannagar Police Commissionerate and the Officer-in-Charge, Baguiati Police Station.

On behalf of the private respondents an adjournment is sought for on the ground of non-availability of the advocate.

I am not inclined to grant such adjournment in the facts and circumstances of the instant case, and as such, the matter is taken up in the absence of the advocate representing the said private respondents.

After considering the respective submissions and the materials on record, I find that the complaint made by the petitioners on 19th October, 2020 is required to be looked into by the Officer-in-Charge, Baguiati Police Station, being the respondent no.7 apart from the Municipal Authorities in view of the order dated September 6, 2019.

The respondent no.7 shall, after considering the nature of the alleged offence disclosed in the letter dated 19th October, 2020 either register a General Diary Entry (GDE) or an FIR as the case may be and act in accordance with law while dealing with the GDE or the FIR that may be registered.

The police authorities shall also ensure that there is no breach of peace in the event the petitioners carry out the demolition work strictly in terms of the order

communicated by Bidhannagar Municipal Corporation, vide its letter dated 17th June, 2019 and the letter dated 16th October, 2020 also by Bidhannagar Municipal Corporation and keep the said municipal corporation apprised of the stage of demolition on regular basis as it involves safety and security of life and property.

Nothing further remains to be adjudicated in this writ petition. The same is disposed of accordingly without any order as to costs.

Since I have not called for any affidavits, allegations made in the writ petition are deemed to have not been admitted.

Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertakings.

(Arindam Mukherjee, J.)