

AD. 17.
March 1, 2021.
MNS.

W. P. A. 11489 of 2020
(**Via video conference**)

M/s. Jagannath Construction and others
Vs.
State of West Bengal and others

Mr. Phatick Chandra Das

... for the petitioners.

Ms. Chama Mukherjee,
Ms. Paromita Pal

...for the respondent nos. 1 to 4.

Affidavit-of-service filed in Court today be
taken on record.

Despite service, none appears on behalf of
the respondent nos. 5, 6 and private respondent
no. 7, although the petitioners and the respondent
nos. 1 to 4 are represented through counsel.

The allegation of the petitioners is that the
private respondent no. 7, a cobbler, has
encroached upon the space in front of one of the
gates of a housing complex erected by the
petitioners in the capacity of developers. Despite
complaints, the police authorities are not taking
any step thereon. That apart, it is alleged that
such structure is illegal and even the municipality

has not acted on the intimation of the petitioners to that effect.

Learned counsel appearing for the respondent nos. 1 to 4 files a police report which indicates that the father of private respondent no. 7 had been occupying the space-in-question since fifty years and after the demise of the father, the respondent no. 7 and his brother have been running their traditional business as cobblers.

It is further stated in the said report that the petitioners, taking advantage of the lockdown, demolished the said structure and the respondent no. 7 and his brother are running the business at present at the same place under the open sky on the footpath.

It is further mentioned in the report that the SI, Amal Kr Mondal, inquired into the complaint of the petitioners but the petitioners' claim could not be substantiated because the respondent no. 7 has been running his business since before the construction of the apartment by the petitioners.

Let the said report be taken on record.

It is apparent from the police report that the private respondent no. 7 may himself be a victim of the construction of the building in a place

immediately adjacent to the space from which the private respondent no. 7 had been running business as a cobbler. Although the petitioners may have justification for contending inconvenience since the ingress and egress through one of their gates is blocked by private respondent no. 7, the same *ipso facto* cannot give rise to a right of the petitioners to evict the private respondent no. 7 unlawfully without due course of law; more so since it is indicated in the police report that the private respondent no. 7, who has meagre financial means, has been running the business at the said space from prior to the construction of the building.

However, since the petitioners have made a specific allegation before the Municipality as well regarding the alleged structure of the private respondent no. 7 being illegal, it would suffice if the respondent no. 6 is directed to look into such representation annexed at page 100 of the present writ petition.

However, the police authorities cannot be faulted for any inaction, since the report is quite comprehensive with regard to the steps taken by the police authorities in respect of the petitioners' complaint.

Accordingly, W. P. A. 11489 of 2020 is disposed of by directing respondent no. 6 to consider the representation of the petitioners, annexed at page- 100 of the writ petition, within four weeks from the date of communication of this order as well as a fresh copy of the writ petition on respondent no. 6 by the petitioners.

It is made clear that the rival contentions and rights of the petitioners and the private respondent no. 7 in respect of legality of occupation of the private respondent no. 7 have not been gone into by this Court on merits.

It is further clarified that this order cannot be used as a premium by the petitioners to oust the private respondent no. 7 from the space-in-question without following due process of law.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)

