

01.04.2022
Sl. No. 24
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**W.P.A. 11566 of 2020
CAN 1 of 2022**

**Dr. Chira Ranjan Biswas & ors.
Vs.
The Chairman, Kamarhati Municipality & ors.**

Mr. Bhagbat Chaudhuri
Mr. Monojit Chatterjee
... for the petitioners

Mr. Sankha Subhra Ray
... for the Municipality

Mr. Amber Majumdar
Mr. Pranab Kumar Chatterjee
Mr. Asharbad Sarkar
... for the respondent no.4

The petitioners have complained of unauthorised construction by the respondent no.4 on premises no.12/11, Nawab Abdul Latif Street, Belgharia, Police Station Belgharia, Kolkata-700056.

According to the petitioners, the construction has been made illegally.

Mr. Amber Majumdar, learned Advocate appearing on behalf of the respondent no.4 submits that the construction has been made in accordance with the building plan and there has been no deviation either from the plan or from the building rules.

According to Mr. Sankha Subhra Ray, learned Advocate appearing on behalf of the Kamarhati Municipality, on a preliminary inspection only 0.38% deviation has been detected, which according to Mr.

Majumdar, has occurred due to plastering of a portion of the wall.

The petitioners submit that there are several deviation.

However, this writ petition is bereft of any detail of such allegation.

On the basis of the submissions made by the respective parties, this Court is of the opinion that the writ court cannot decide such factual dispute. It is also not within the domain of the writ court to come to a finding whether the construction has been made in violation of the plan or not. The expert in this regard, is the municipality. The law reposes immense power upon the municipality, to act and proceed on the basis of the allegation of unauthorised construction.

Mr. Majumdar has submitted a copy of the sanction plan, granted by the concerned municipality, which is kept on record.

Under such circumstances, nothing remains to be decided in this writ petition. The municipal authorities, who have taken cognizance of the allegation of the petitioners, must conclude the proceeding, in accordance with law. While doing so, the competent authority of the Kamarhati Municipality shall adopt the following procedure:-

- a) An inspection of the premises shall be conducted.

Such inspection shall be held in the presence of the petitioners and the respondent no.4, within

three weeks. Advance notice of the inspection shall be served upon the petitioners and the respondent no.4. If the parties are not available to accept notice, the authorities shall affix the notices of hearing and inspection at conspicuous places in their respective premises.

- b) In case, it is found on preliminary inspection that there may be reasons to believe that the construction was without permission and was continuing, the authorities may take interim measures by stopping such construction.
- c) A report of such inspection shall be prepared along with the sketch map, indicating the extent and nature of unauthorized construction, if any.
- d) Such report shall be handed over to the parties.
- e) A hearing shall be given to the petitioners and the respondent no.4. The parties must also be allowed to furnish their written objection/version to the said report and adduce oral and documentary evidence in support of their contentions, before the competent authority. All points raised by the parties shall be decided. All documents filed by the parties, if any, shall be exchanged.
- f) 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, in terms of the statute.

The court has not gone into the merits of the claims and counter-claims of the parties and the issues involved shall be decided independently. The question of title, boundary dispute and allegation of encroachment shall not be gone into.

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

With the above observations, this writ petition along with the connected application are disposed of.

However, there will be no order as to costs.

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

(Shampa Sarkar, J.)