

Item No. 27

26.09.2022
Ct-24

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 283 of 2022
Ranjan Ray & Anr.
v.
The State of West Bengal & Ors.

Mr. Sukhendu Banerjee
Mr. Dilip Kumar Mondal
Mr. Mritunjay Saha
... for the petitioners.

Mr. Ranajit Chatterjee
Mr. Arijit Dey
... for the Municipality.

Sk. Md. Galib
Ms. Jyotsna Roy Mukherjee
... for the State.

Mr. Manas Dasgupta
Mr. Gourav Das
... for the respondent no. 9.

The petitioners are aggrieved by the order dated November 16, 2021 passed by the Chairman, Board of Administrators, Baranagar Municipality.

Learned advocate for the petitioners submits that even though notice of hearing was given to the petitioners, but the petitioners were not permitted to make any submission at the time of hearing.

The impugned order, however, records that the petitioners were present and made submissions. The Board of Administrators of the Municipality considered the prayer of the petitioners and directed the private

respondent to demolish the excess height i.e. 0.20 meters illegal construction of the boundary wall on the eastern side of the Premises No. 284/1/B, G.L.T. Road, Kolkata- 700036.

According to the petitioners, the Municipality directed demolition only in the Eastern side but not on the Northern side.

The further grievance of the petitioners is that damages were caused to the structure of the petitioners at the time of making construction by the private respondent.

Learned advocate representing the private respondent submits that the Municipality considered the prayer of the petitioners in terms of the order passed by this Court. The issue of damages was not there in the earlier writ petition. The petitioners cannot expand the scope of the writ petition.

It has been submitted that the private respondent has already demolished the portion as directed by the Municipality and compliance report has been filed before the Municipality.

The learned advocate representing the Municipality submits that the parties were heard and the offending portion of the construction and the boundary wall has already been demolished.

The petitioners complain that the Municipality has not taken into consideration their prayer regarding damages caused to their property on account of the construction made by the private respondent.

The submission of the petitioners with regard to the damages was not before the Court in the earlier writ petition. This is an additional submission that is being made for the first time after the order was passed in the earlier writ petition.

For ends of justice, the Baranagar Municipality is directed to cause a site inspection of the premises in question upon giving prior notice of inspection to the petitioners as well as the private respondent to ascertain as to whether there is any other common boundary in between the petitioners' premises and the premises of the private respondent which has been constructed in excess of the prescribed height.

The Municipality shall also consider the grievances of the petitioners with regard to the damages caused to their property on account of making construction by the private respondent.

If it transpires that the damages were indeed caused because of the construction made by the private respondent, then necessary steps shall be taken to deal with the same.

The Municipality shall conduct an inspection within a period of six weeks from the date of communication of a copy of this order and take a decision with regard to the boundary wall as well as the damages within a period of six weeks from the date of inspection. A final order be passed in the matter and communicated to the petitioners immediately thereafter.

The petitioners are directed to forward a copy of the written statement filed on October 4, 2021 to the

Municipality at the time of communicating the order of the Court.

The writ petition stands disposed of.

As the writ petition is being disposed of without calling for any affidavits, the allegations made therein are deemed not to have been admitted by the respondent.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities

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(Amrita Sinha, J.)