

17.05.2022
Court No. 19
Item no.05
CP

WPA No. 332 of 2022

Biswanath Mondal
Vs.
The State of West Bengal & Ors.

Mr. Rabindra Kumar Jaiswal

....for the petitioner.

Ms. Sneha Dutta

....for the respondent no. 6.

The respondent no. 6 who was hitherto avoiding service, is represented before this court. An adjournment is being prayed for on behalf of the respondent no. 6.

Such prayer is not allowed as the court does not propose to allow the prayer for demolition, at this juncture.

None appears on behalf of the Bidhannagar Municipal Corporation (hereinafter referred to as 'the corporation'), despite service upon Mr. Arka Nag, learned advocate who usually appears for the corporation.

There is an allegation of unauthorized construction of a septic tank situated at AB, Block – C, Adarshpally, P.O. – Gouranganagar, Kolkata – 700162 which is allegedly adjacent to the premises of

the petitioner situated at Plot No. AB7/15, Block – C, Adarshpally , P.O. – Gouranganagar, Dist – North 24 Parganas. The allegation is that the construction has been made without any sanction and in violation of the building rules. It is alleged that the mandatory space as required under the building rules between the two houses, has not been maintained.

This court does not think that any useful purpose will be served to ask for a further report from the authorities. Instead, the authority empowered by law to deal with such issues, must be directed to dispose of the complaint of the petitioner.

Records reveal that the Executive Engineer of the corporation by a notice dated January 25, 2021 had already directed the said Upendranath Goswami to submit all documents before the corporation. Till then, the said respondent was directed not to raise any construction on the said plot. The petitioner's case is that despite such 'stop work' notice, the construction continues and no steps have been taken by the corporation in respect of the alleged unauthorized construction.

Under such circumstances the competent authority of the corporation is directed to dispose of the complaint lodged by the petitioner dated January 3, 2022 through his learned advocate, by adopting the following procedure:

- a) Inspection of the construction shall be conducted in the presence of the petitioner and the respondent no. 6, with 48 hours advance notice to the parties. If the parties are not available to accept notice, the same shall be affixed at a conspicuous place in the respective premises.
- b) During inspection, if any further construction is detected in violation of the rules, then the corporation can take interim measures.
- c) Reports shall be prepared and handed over to the petitioner and the respondent no.6.
- d) Thereafter, a hearing shall be given to the petitioner and the respondents No. 6. The parties must also be allowed to furnish their written objection/version to the said reports and adduce oral and documentary evidence in support of their contentions, before the competent authority.
- e) 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 with regard to the constructions.

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

The court has not gone into the merits of the claims and counter-claims of the parties and the issues shall be decided independently.

The question of title, possession and boundary dispute etc. shall not be decided by the corporation. The only question to be decided by the corporation would be whether the construction has been made without any permission and/or in violation of the building rules.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

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

(Shampa Sarkar, J.)