

24.03.2022
Court No. 19
Item no.11
CP

W.P.A. 572 of 2022

Dr. Kiran Sankar Pati
VS
The State of West Bengal & Ors.

Mr. Siddhartha Banerjee
Mr. S. N. Ghosh
Mr. G. Patra
Mr. Subrata Mukherjee
Mr. Soumajit Majumder
... for the Petitioner.

Mr. Gopal Chandra Das
..for the Tamralipta Municipality.

Mr. Malay Singh
Ms. Neelam Singh
....for the State

Despite service, none appears on behalf of the respondent no. 8.

The affidavit of service is taken on record. A notice was served upon the said respondent No. 8, pursuant to the direction of this court dated March 10, 2022.

This court decides to dispose of the writ petition in the absence of the said respondent. The court is not inclined to decide the disputes raised on merits, but relegates the entire issue before the authority empowered by law to deal with the allegations in the writ petition.

The petitioner has alleged that the respondent no. 8 has made some unauthorized constructions on

L.R. Plot Nos. 646 and 647 and parts of a common area enjoyed by the parties.

Although, neither the writ court nor the municipal authorities are competent to adjudicate either the question of title or the allegation of encroachment which has been raised by the petitioner, the municipal authorities are, however, empowered by law to deal with the allegations of unauthorized construction.

Mr. Das, learned advocate appearing on behalf of the Tamralipta Municipality, submits that the municipal authorities shall look into the complaint of the petitioner in accordance with law upon granting adequate opportunity to all concerned to represent their respective cases. He also submits that the municipal authorities have already issued a 'Stop Work' notice.

The writ petition is disposed of with a direction upon the competent authority of the Tamralipta Municipality to act and proceed in accordance with law and dispose of the entire issue by adopting the following procedures:

- a) An inspection of the above plots shall be conducted. Such inspection shall be held in the presence of the parties, with 48 hours advance notice to the petitioner and the respondent no. 8.

- 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 such interim measures by stopping such construction.
- c) The report of the inspection shall be prepared along with the sketch map indicating the extent of deviation, if any.
- d) Such report shall be handed over to the petitioner as also the respondent no. 8.
- e) A hearing shall be given to the petitioner and the respondent no. 8. 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.
- 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 shall be decided independently.

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

The writ petition is, thus, disposed of. There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)