

14.03.2022
Sl. No. 19
ss

W.P.A. 1013 of 2022

Smt. Arati Choudhury
Vs.
Kharagpur Municipality ors.

Mr. Sudeep Sanyal
Mr. Sukanta Das
Ms. Lopamudra Moitra
... for the petitioner

Mr. Rabindra Nath Datta
Mr. Sakti Sadhan Samanta
Mr. Monoranjan Jana
... for the respondent no.3

Affidavit of service filed in Court be kept with the record.

The writ petitioner alleges that the plan submitted by the respondent no.3 before the Kharagpur Municipality for construction of premises being R.S. Plot No.1164 corresponding to L.R. Plot No.6619 pertaining to L.R. Khatian No.2788 of Mouza Inda, was sanctioned by the Kharagpur Municipality on the basis of fraud and material misrepresentation that was practised by the respondent no.3.

It appears that the municipality on the basis of the complaint received from the petitioner had informed the respondent no.3 that the proposed building plan was being scrutinised.

It is urged by Mr. Sanyal, learned Advocate for the petitioner that pursuant to such notice dated 30th

January, 2021 the plan was sanctioned upon scrutiny. The contention of the petitioner with regard to fraud and misrepresentation was not considered. He also submits that the municipality could not have sanctioned the plan as the side space required under the law which was to be maintained between two buildings or premises had not been kept.

Mr. Datta, learned Advocate appearing for the respondent no.3 submits that the petitioner filed a suit for declaration and injunction in the Court of learned Civil Judge, Junior Division, Kharagpur being Title Suit No.05 of 2021. The application for injunction upon the respondent no.3 from continuing with the construction was rejected and a Misc. Appeal has been preferred.

The record reveals that the learned Court below rejected the application for injunction on being *prima facie* satisfied that the respondent no.3 was constructing a building pursuant to a sanctioned building plan. The question whether the sanction has been granted according to law or on the basis of fraud and misrepresentation practised by a party, is not within the domain of the civil court. Unauthorised and illegal constructions and prayers for cancellation of plan, are matters to be decided by the municipality in accordance with the provisions of the West Bengal Municipal Act, 1993.

Under such circumstances, the writ petition is disposed of with a direction upon the petitioner to approach the municipal authorities with their allegation in respect of the sanction of the plan and if such complaint is filed, the same shall be proceeded with under Section 217 of the West Bengal Municipal Act, and disposed of in accordance with law..

An inspection shall be made in the presence of the parties including the respondent no.3. Hearing shall be given to all the parties including the respondent no.3 and a reasoned order shall be passed and communicated to all. The parties shall exchange all documents and written versions/complaints that will be submitted during the proceeding. The entire exercise should be completed within a period of three months from the date of receipt of the complaint of the petitioner.

There shall be no order as to costs.

All parties are to act on website copy of this order.

(Shampa Sarkar, J.)