

S/L 25
03.03.2022
Court. No. 19
GB

W.P.A. 1171 of 2022

Smt. Barnali Bhattacharyya
VS
New Barrackpore Municipality & Ors.

*Mr. S.C. Shirvastava,
Ms. Puja Yadav,
Mr. Anuj Pratap Singh.*

...for the Petitioner.

Mr. Udayan Datta.

...for the Municipality.

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

Despite service, none appears on behalf of the respondent no.5.

The allegation is that the respondent no.5 has been constructing illegally on Premises No.301/1, Vidyasagar Road, New Barrackpore under Ward No.2, District :-North 24 Parganas. It is submitted that the mandatory side space as required by the rules, have not been kept.

Mr. Datta, learned advocate appearing on behalf of the municipality submits that upon receipt of the complaint of the petitioner a preliminary inspection was made by the municipality. Some sun shades were found to have projected into the mandatory open side space, which were demolished. However, the municipality submits that further inspection would be made in order to ascertain whether there are other unauthorized constructions.

The writ petition is disposed of in the absence of the respondent no.5 as the Court is not inclined to go into the merits of the issues at this stage. The Court is of the opinion that the entire dispute must be determined by the municipality, which is empowered by law to take steps on receipt of any complaint regarding unauthorized construction.

While disposing of the complaint of the petitioners, the municipality shall adhere to the following procedure:-

a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent No.5 within three weeks. All the parties will be entitled to be represented by their learned advocates. Advance notice of the inspection shall be served upon the petitioners and the respondents and all other interested parties. If the parties are not available to accept notice, the authorities shall affix the notice of hearing and inspection at conspicuous places in their respective premises. Such affixation shall be treated as notice to all the parties.

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 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 respondents. 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 either party, will be decided.

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 the issues involved shall be decided independently.

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

Accordingly, the writ petition is disposed of.

There will be however no order as to costs.

All parties are directed to act on the basis of server copy of this order and/or the learned advocate's communication.

(Shampa Sarkar, J.)