

S/L 23
21.03.2022
Court No.19
SD

WPA 1405 of 2022

Monahar Das Nag Deve
Vs.
The State of West Bengal & Ors.

Mr. Sounak Bhattacharya
Mr. Samit Mandal
Mr. Sounak Mandal

...for the Petitioner.

Mr. Raja Ram Banerjee

...for the State.

Mr. Santosh Kr. Chakraborti

...for the Respondent No.8.

Affidavit of service filed in Court today, be taken on record.

Despite service, none appears on behalf of the Kharagpur Municipality.

The petitioner has alleged that the respondent no.8 has made certain unauthorized construction on R.S. plot No. 135/432 and 87/413 pertaining to Khatian No.310 and 314, J.L. No.143, Mouza – Mathurakati Khas Jungle, at Kharagpur.

It is the contention of the petitioner that such unauthorized construction was, prima facie, detected by the Municipality and a stop work notice under Section 204 of the West Bengal Municipal Act, 1993 (hereinafter referred to as the said Act) had been issued. It is prayed that the proceeding must be reached to its logical conclusion, in terms of the Section 218 of the said Act.

Mr. Chakraborti, learned advocate appearing on behalf of the respondent no.8, denies such allegation of unauthorized construction. It is submitted that some repair works were going on and such repairing could not be construed as a new construction. It is further submitted that at the moment, no construction has been made. No further construction is going on. He also submits that the writ court cannot pass any orders in view of the civil suit pending between the parties.

The police authority has filed a report from which, it appears that a prosecution vide NCR No.136 of 2022 dated February 18, 2022 under Section 107 of the Code of Criminal Procedure has been submitted against the respondent no.8. It also appears that a civil suit is pending between the parties with regard to declaration and injunction.

Heard the learned advocates for the respective parties.

The Municipality has already initiated a proceeding by issuing a stop work notice. It is the opinion of this Court that the Municipality must reach such proceeding to its logical conclusion, in accordance with law.

Under such circumstances, the writ petition is disposed of with a direction upon the competent authority of the Kharagpur Municipality to treat the writ petition as a representation and dispose of the same in accordance with law, by adhering to the following procedure:-

- a) An inspection of the premises shall be conducted. Such inspection shall be held in the presence

of the petitioner and the respondent no.8, within three weeks. Advance notice of the inspection shall be served upon the petitioner and the respondent no.8. If the parties are not available to accept notice, the authorities shall affix the notices of hearing and inspection at conspicuous places in their respective premises.

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 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. All points raised by either party, shall 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 counter-claims of the parties and the issues involved shall be decided independently. The question of title, ownership, boundary disputes etc shall not be gone into by the municipality.

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 no order as to costs.

All parties are directed to act on the basis of the learned advocate's communication.

(Shampa Sarkar, J.)