

10.03.2022
Court No. 19
Item no.17
CP

WPA 1449 of 2022

Miss Sima Das
Vs.
Baidyabati Municipality & Ors.

Mr. Ayanava Bhattacharyya
..for the petitioner.

Mr. Subrata Ghosh
Mr. Ejaz Hossain
....for the State.

Mr. P.P. Roy
Mr. Nilanjan Adhikari
.....for the respondent no. 5.

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

The petitioner is the daughter of the vendor of
the respondent no. 5. The petitioner alleges that the
respondent no. 5 has made certain unauthorized
constructions on L.R. Dag No. 2222 under Khatian
No. 7287 and holding No. 199/1, Bowria Para Road,
under Ward No. 20 of the Baidyabati Municipality.

It is the contention of the petitioner that
construction of a godown and an office room has
been made on a common passage without leaving
adequate side space. The petitioner claims to be in
occupation of a structure adjoining the said plot.
According to the petitioner, a complaint had been
filed before the chairperson, Board of Administrators

of the Baidyabati Municipality on July 29, 2021, which was followed by a demand of justice dated September 6, 2021.

Mr. Roy, learned advocate appearing on behalf of the respondent no. 5, submits that the petitioner does not have any locus to file the writ petition. According to him, the entire attempt of the petitioner was to extort money from the respondent no.5 who had purchased the plot from the father of the petitioner. The respondent no. 5 also denies the right of the petitioner, on the selfsame plot in question.

Heard the learned advocates for the respective parties.

The petitioner is in occupation of a room adjoining to the said plot in question. The petitioner made certain allegations before the concerned authorities about the illegalities in construction. The authority, i.e. the Baidyabati Municipality is duty bound under the law to ensure that unauthorized and illegal constructions do not take place within the limits of its territorial jurisdiction. Such exercise has not been done by the municipality, despite receiving complaints from the petitioner.

This court is of the opinion that the Baidyabati Municipality must discharge its functions as a statutory body and take cognizance of the allegations made by the petitioner, and ultimately adjudicate the

disputes which have been raised. While doing so, the following procedure should be followed:

- a) An inspection of the site 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.5.
- b) The report of the inspection shall be prepared along with the sketch map indicating the extent of deviation, if any.
- c) Such report shall be handed over to the petitioner as also the respondent no.5.
- d) A hearing shall be given to the petitioner and the respondent no.5. 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. If unauthorized constructions continue, interim measures shall be taken.
- 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.

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

The municipal authorities shall restrict its adjudication only to the aspect of unauthorized construction. The question of title, encroachment, boundary dispute, possession etc. shall not be gone into.

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

As affidavits are not called for, allegations made against the respondent no.5 are deemed to have been denied.

A copy of the writ petition shall be served along with the server copy of this order upon the Baidyabati Municipality.

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.)