

04.05.2022
Court No. 19
Item no.13
CP

WPA 1571 of 2022
With
CAN 1 of 2022

Sabana Parveen & ors.
Vs.
The State of West Bengal & ors.

Mr. Soumyajit Bhatta
Mr. Zahid Ali Khan

....for the petitioners.

Mr. Arabinda Chatterjee, Sr. Advocate
Ms. Kakuli Dutta

...for the respondent no. 6.

Mr. Debjit Mukherjee

....for the State.

Mr. Syamal Kr. Das
Ms. Krishna Yadav

...for the Titagarh Municipality.

CAN 1 of 2022 is an application for substitution of the legal heirs and representatives of the writ petitioner, Sarbar Jahan (since deceased). All the applicants are major and *sui juris*.

In view of the fact that the matter is being taken up instantly and the parties are ready, the learned advocate for the petitioner is directed to add the substituted heirs as the petitioner nos. 1(a) to 1(d) in place of the original writ petitioner (since deceased) here and now in the cause title of the writ petition.

CAN 1 of 2022 is allowed.

WPA 1571 of 2021

The police report filed in court today, is kept with the record.

Although there has been a finding of unauthorized construction/deviation having been constructed by the respondent no. 6 and several orders have been passed by this court, it is alleged by the petitioners that the Titagarh Municipality has failed and neglected to take steps in accordance with law by demolishing the deviations which had been detected in terms of the orders of this court.

The alleged construction has been made at premises no. 116, R.P. Gupta Path, P.O. & P.S. – Titagarh. It is alleged that the Titagarh Municipality (hereinafter referred to as ‘the municipality’), has continuously failed and neglected to take steps despite there being several directions of this court. Such facts are obvious from the records.

It also appears that a direction for demolition had been made by the chairman of the municipality by a communication dated December 24, 2019. Admittedly, the deviated portions have not been demolished. The communication dated December 24, 2019 was challenged by the respondent no. 6 by filing W.P. No. 1671(W) of 2020. The said writ

petition was disposed of with the observations as follows:

“Impugned communication is a request to demolish deviated areas/portions of the building on front, west and back sides, per measurements given therein. It does not appear to be an order made under section 218. In event petitioner does not accede to the request, the Board will act in accordance with law.”

The petitioners thus pray that the writ petition be disposed of with a direction upon the municipality to execute the demolition order passed.

Mr. Chatterjee, learned senior advocate appearing for the respondent no. 6, submits that proceedings under Sections 217 and 218 of the West Bengal Municipal Corporation Act, 1993 (hereinafter referred to as ‘the said Act’), was never initiated. No hearing was granted to the parties. Thus, according to him, even a Coordinate Bench of this court had held that the order which the petitioners seek to be implemented was merely a request by the authority and the same cannot be treated as a demolition proceeding in terms of the provisions of law. He further submits that the findings of deviations was a determination by the chairperson which could not be taken as a finding on the basis of an inspection held in a proceeding under Section 218 of the said Act.

Mr. Bhatta, learned advocate for the petitioners, submits that such deviation was found

by the authority and no further inspection would be necessary.

The issue has been alive since 2008 and it appears that the municipality had passed certain orders and taken some steps which were confusing and contradictory and as such, the alleged unauthorized construction remained, despite there being specific findings with regard to deviations. There is no dispute that the deviations have been detected by the municipality on earlier occasions.

In order to put a finality to this issue, this court mandatorily directs that an inspection shall be made by an authorized engineer of the municipality and thereafter the proceedings must be disposed of upon hearing both the parties by the competent authority. It is not in dispute that the municipality is now under the Board of Councilors.

The proceeding which will be initiated on the basis of the order of this court, shall be a proceeding in terms of Sections 217 and 218 of the said Act. While disposing the entire issue, the competent authority of the municipality shall adhere to the following procedure:

- a) An inspection of the premises shall be conducted within 10 days from date. Such inspection shall be held in the presence of the parties, with 48 hours advance notice to

the petitioners and the respondent no. 6. If the parties are not available for service of the notice, the notice shall be affixed at a conspicuous place at the premises in question.

- 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 petitioners as also the respondent no. 6.
- d) A hearing shall be given to the petitioners and respondent no. 6. 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.
- 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 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 six weeks 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.)