04.04.2022
Court No. 19
Item no.04
CP

W.P.A. No. 2637 of 2022

Hemansu Kundu
Versus
The Kharagpur Municipality & Ors.

Mr. Siddhartha Banerjee
Ms. Soni Ojha
Ms. S. B. Chatterjee
...for the Petitioner.

Mr. Mrinal Kanti Ghosh

...for the Kharagpur Municipality.

Mr. Partho Pratim Roy
Mr. Soumyajit Das Mahapatra

....for the respondent no. 7.

Mr. Kushal Paul

....for the respondent no. 8.

The petitioner submits that the order dated August 3, 2021 passed in WPA No.11314 of 2021, has not yet been followed by the authorities of the Kharagpur Municipality (hereinafter referred to as 'the municipality'). It is alleged that the construction on R.S. Plot No.302 of Mouza Inda has not been inspected as yet.

Mr. Paul, learned advocate appearing on behalf of the respondent no. 8, the developer, submits that the petitioner had moved this court on an earlier occasion by filing WPA No. 11314 of 2021. By an order dated August 3, 2021, the same was disposed

of with a direction upon the competent authority of the municipality to decide the complaint of unauthorized construction raised by the petitioner. The municipality was directed to cause an inspection in the presence of the respondent nos. 7 and 8 and, thereafter upon giving an opportunity of hearing to all concerned, to pass a reasoned order in accordance with law.

It is also on record that a civil suit which was filed, has been withdrawn, with liberty to file it afresh. This, Mr. Banerjee, learned advocate appearing for the petitioner, on instructions says was an incorrect approach of the plaintiff in the suit and he assures the court that the plaintiff has not and shall not file any suit on the selfsame cause of action alleging unauthorized constructions over R.S. Plot No. 302 and extension of such unauthorized construction over R.S. Plot No. 308 in Mouza – Inda, within the territorial jurisdiction of Kharagpur Municipality.

Mr. Ghosh, learned advocate appearing for the municipality, submits that a 'stop work' notice has been served upon the respondent no. 7. Notice of inspection had also been served upon the respondent nos. 7 and 8. He submits that the inspection of R.S. Plot No. 308 with regard to the allegations of extension of unauthorized construction over the said

plot has been made. However, he submits that inspection of R.S. Plot No. 302 has not yet been made and the same shall be done soon.

Under such circumstances, as the municipality has taken cognizance of the complaint and has partially complied with the order of this court, nothing remains to be decided in the writ petition. The inspection with regard to the constructions on R.S. Plot No. 302 and R.S. Plot No. 308 shall be held on a date fixed by the municipality upon notice to all the parties. A composite report shall be prepared and supplied to the parties. Thereafter a reasoned order shall be passed and communicated to all, upon granting an opportunity of being heard.

Before the hearing, the municipality shall allow the parties to file their respective documents and answer to the report. Parties shall also be allowed to adduce both oral and documentary evidence in support of their respective claims.

The court has not gone into the correctness of the allegations and the issues shall be decided independently.

It is also a matter of record that an application for regularization has been filed by the respondents Nos.7 and 8 for regularization of minor deviations. The same shall also be considered simultaneously, in

the proceedings to be initiated on the basis of this order as also, the earlier order.

This order shall not be construed as a declaration that the respondent nos. 7 and 8 have a right to get their deviations regularized. Such decision shall also be in accordance with the provisions of law.

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

The question of encroachment shall only be decided in order to ascertain whether the construction on R.S. Plot No. 302 has extended to R.S. Plot No. 308, on account of such unauthorized construction. However, if it is a question of title or boundary dispute, the same shall not be granted.

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.)