

03.03.2022  
Sl. No.16  
srm

**W.P.A. No. 2384 of 2020**

**Nihar Nath & Anr.**

**Versus**

**South Dum Dum Municipality & Ors.**

Mr. Gautam Lahiri,  
Ms. Sana Parveen

...for the Petitioners.

Mr. N.C. Bihani,  
Mrs. Papiya Banerjee Bihani

...for the South  
Dum Dum Municipality.

Despite service, none appears on behalf of the respondent No.3. Affidavit of service is taken on record.

The petitioners have alleged that the respondent No.3 has made some constructions in the plot adjacent to the Premises No.440, Green Park, Sarada Pally, Police Station-Lake Town, Kolkata-700055. The allegations are that the construction has been made in such a manner that the 4 feet open side space from the basement to the top floor of the building, has not been kept. The construction, thus, according to the petitioners, is in violation of the building rules. It is further submitted that the construction of the respondent No.3 had extended into the side space meant to be kept open as per the rules. Reliance is placed on a notice

issued by the South Dum Dum Municipality to the respondent No.3, in this regard.

It appears from the records that the municipality had taken cognizance of the complaint of the petitioner and had also caused an inspection.

Mr. Bihani, learned Advocate appearing on behalf of the South Dum Dum Municipality, confirms that an inspection was held on November 11, 2020. Some unauthorised constructions were detected. Thereafter, a hearing was called on December 21, 2020, but the parties did not appear.

The respondent No.3, despite service, does not appear before the Court.

The writ petition is disposed of in the absence of the said respondent, as no orders are being passed which would adversely affect the said respondent, at this stage. The Court relegates the matter to the municipality with a direction to act and proceed as per law, upon observing the principles of natural justice and upon giving all the parties adequate opportunity to represent their respective cases. While disposing of the complaint of the petitioner, the competent authority of the South Dum Dum Municipality shall adhere to the following procedure:-

- (a) The competent authority of the South Dum Dum Municipality shall cause an inspection of the premises in question in the presence of the interested parties including the petitioners and the respondent No.3 in order to ascertain whether there has been any unauthorised construction and also to ascertain the extent and nature of the unauthorised construction, if any, within three weeks from date.
- (b) A copy of the inspection report shall be handed over to the respective parties.
- (c) The petitioners as also the respondent No.3 shall be given a hearing.
- (d) The interested persons shall be allowed to file their written versions and adduce oral and documentary evidence in support of their respective claims at the time of hearing.
- (e) A reasoned order shall be passed and communicated to all concerned.
- (f) Needless to mention, the entire proceedings, so initiated, shall be reached to its logical conclusion and the municipality will be at liberty to proceed in accordance with law, if any unauthorised construction is detected.
- (g) If the construction is continuing, then interim measures shall be taken.

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

This Court has not gone into the merits of the claims and counterclaims of the parties and all points are left open for decision by the South Dum Dum Municipality.

This writ petition is, thus, disposed of.

There will be no order as to costs.

All parties are to act on the basis of the server copy of this order.

**(Shampa Sarkar, J.)**