

S/L 18
05.05.2022
Court. No. 19
GB

WPA 3890 of 2022

Abdul Rahim Tarafdar & Ors.
VS
The State of West Bengal & Ors.

Mr. A.K. Routh.

...for the Petitioners.

*Mr. Rabindra Narayan Dutta,
Mr. Hare Krishna Halder.*

...for the State.

*Mr. Anirban Das,
Mr. Sarbananda Sanyal.*

...for the Respondent Nos.7 to 14.

Despite service, none appears on behalf of the Bidhannagar Municipal Corporation.

The petitioners allege that the respondent nos.7 to 14 have raised an unauthorized construction on Dag Nos.730, 731, 732, 733, 737, 738, 343, 346, 397, 398, 399, 400, 492, 493 and 500, measuring about 1.31 Decimals under Police Station – Baguiati, Districtv –24 Parganas (North).

It is the contention of the petitioners that the said plots are undivided. The petitioners claim to be the co-sharers. A partition suit is pending. The petitioners have failed to obtain any order of injunction.

However, the petitioners allege that refusal of the injunction order will not disentitle the petitioners from challenging the said construction on the ground of violation of the West Bengal Municipal Corporation Act, 2006.

According to the petitioners, the construction of the six storied structures was contrary to the Rules and the Corporation could not have accorded any sanction in respect thereof. Complaint has been filed with the Executive Officer

(Building Plan), Bidhannagar Municipal Corporation, which is annexed to the writ petition. The Corporation remained silent. Hence, the writ petition.

Mr. Das, learned advocate appearing on behalf of the respondent nos.7 to 14 submits that the allegations of the petitioners are two-folds, First, that an encroachment has been made in the area, which is under the occupation of the petitioners and secondly, the construction has been made without leaving the mandatory open spaces.

He further submits that the petitioners have failed to obtain any order of injunction in the civil suit, which is pending between the parties. The civil court has not restrained such construction.

The police report indicates that there is a legal dispute with regard to the division of ancestral property between the parties and M.P. Case No.5061 of 2021 had also been instituted before the learned Executive Magistrate, Barasat (Sadar). The police authorities, however have not opined with regard to the allegation of illegal construction. The police report is taken on record.

Heard the learned advocates for the respective parties. The partition suit shall continue on merits. The allegation of encroachment of undivided portion, etc. are not to be decided by this Court, neither the Corporation shall decide such issue. However, all that the Corporation must decide is whether the construction has been made in accordance with the plan sanctioned by the Corporation and whether any building rules having been violated.

Under such circumstances, the writ petition is disposed of. The petitioners are granted liberty to approach the competent authority of the Bidhannagar Municipal Corporation in accordance with law ventilating their grievances. Upon receipt of such complaint, the same shall be disposed of in accordance with law and reached to its logical conclusion. While disposing of the complaint of the petitioners, the authority shall adopt the following procedure:-

a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioners and the respondents Nos. 7 to 14. All the parties will be entitled to be represented by their learned advocates. Advance notice of the inspection shall be served upon the petitioners and the said respondents and all other interested parties. If the parties are not available to accept notice, the authorities shall affix the notice of hearing and inspection at conspicuous places in their respective premises. Such affixation shall be treated as notice to all the parties.

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 petitioners and the respondents. 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, will 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 the issues involved shall be decided independently.

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 however no order as to costs.

All parties are directed to act on the basis of a server copy of this order and/or the learned advocate's communication.

(Shampa Sarkar, J.)