

15.03.2022
Item No. 30
Ct. No.19
Saswata

WPA 5125 of 2021
Jharna Mondal
Vs.
State of West Bengal & Ors.

Mr. Uttiya Roy
... for the petitioner

Mr. Debjit Mukherjee
...for the State

On the first occasion, the writ petition was duly served upon the respondent no. 5. Affidavit of service to that effect has been filed in Court today. The same is taken on record.

The service of notice upon the respondent no. 5 could not be effected as on four occasions, the postal peon had found that the respondent no. 5 was absent and the door was locked. The affidavit of service containing the track report of the above mentioned information has been filed, which is also taken on record. None appears on behalf of the Asansol Municipal Corporation.

It is submitted by Mr. Roy, learned advocate appearing for the petitioner that the respondent no. 5 is the owner of the holding no. 803/B, Hill View North, 1st lane, S.B. Garai Road, Asansol and the residence of the petitioner is situated at holding no. 803, adjoining to the premises where the alleged illegal construction is going on.

Although the respondent no. 5 is not present before the Court, the writ petition can be disposed of, as no mandatory directions are being passed affecting the rights of the respondent no.5. Disposal of the writ petition in the absence of the respondent no. 5 shall not affect the right of the said respondent.

Hence, the writ petition is disposed of by directing the competent authority of the Asansol

Municipal Corporation to consider the complaints lodged by the petitioner, which are annexed to the writ petition, in accordance with law.

It is made clear that the entire issue shall be decided in the following manner:-

a) An inspection of the premises shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent no. 5, within three weeks. Advance notice of the inspection shall be served upon the petitioner and the respondent no.5. If the parties are not available to accept notice, the authorities shall affix the notices of hearing and inspection at conspicuous places in their respective premises.

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 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. All points raised by either party, shall 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 counter-claims of the parties and the issues involved shall be decided independently. Issues of title, encroachment, boundary disputes shall not be decided.

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.

However, there will be no order as to costs.

All the parties are directed to act on the basis of the learned advocate's communication.

(Shampa Sarkar, J.)