

11.04.2022
Court No. 19
Item no.05
CP

W.P.A. No. 4532 of 2022

Avijit Shaw
Vs.
Kamarhati Municipality & ors.

Mr. Debjit Mukherjee
Ms. Susmita Chatterjee
Ms. Dipanwita Ganguly
Mr. K. Bhattacharya

...for the petitioner.

Mr. S. Banerjee

....for the municipality.

Despite several attempts to serve the respondent nos. 7 and 8, the postal authorities have failed to deliver the postal articles at their addresses. However, the records reveal that notices of the municipality were received at the same addresses and proceedings initiated on the basis of such notices were also attended by the respondent nos. 7 and 8. Thus, this court is of the opinion that the respondent nos. 7 and 8 are trying to avoid service.

However, the application is taken up and disposed of in their absence as this court is relegating the matter to the municipal authorities without making any observations on merits and without passing any mandatory directions against such respondents.

The petitioner's allegation is that despite having held hearings on two occasions, the authorities of the Kamarhati Municipality (hereinafter referred to as 'the municipality'), have failed and neglected to pass the order, after initiation of the proceedings under Section 218 of the West Bengal Municipal Act, 1993.

The municipal authorities submit that the respondent nos. 7 and 8 were granted sanction to construct. It is further submitted that the hearing was held on two occasions and, thereafter, the authorities pointed out the extent of the unauthorized construction, verbally, to the respondent nos. 7 and 8 and the respondent nos. 7 and 8 demolished the structures. Thus, according to the municipality, there would not be any further impediment on the part of the respondent nos. 7 and 8 from making construction in accordance with the plan.

Although Mr. Mukherjee, learned advocate appearing on behalf of the petitioner, disputes such contentions of the municipality, this court is not in a position to accept Mr. Mukherjee's contention and hold that the submissions of the municipality who is the authority to detect unauthorized construction, is wholly incorrect.

However, as hearings were held, it is a natural consequence that an order would be passed and if any unauthorized structure was detected the same should have a mention in the order itself. Thereafter the exercise undertaken by the respondent nos. 7 and 8 would follow. The demolition would be effected.

The petitioner approached the authority, by lodging a complaint. Thus, this court is of the view that in the absence of any order, after a hearing was held and in the absence of an inspection in the presence of the complainant with regard to the extent of the unauthorized construction which had been allegedly demolished by the respondent nos. 7 and 8, the municipality must hold another inspection in the presence of the parties in order to ascertain whether the entire unauthorized structure as verbally instructed by the municipality, had been demolished or not.

A report shall be prepared with a sketch map indicating whether the existing construction was in accordance with the plan and the unauthorized portion had been demolished.

If it is found that the unauthorized portions have already been demolished, then necessary orders shall be passed. If it is found that there are portions which have not been demolished and are still unauthorized, in that case, further steps shall be

taken in accordance with law. Both the parties shall be allowed to be present at the inspection and shall also be supplied with the inspection report and a final hearing shall be given to the parties in case it is found on further inspection as directed by this court that the entire illegal portions has not been demolished by the respondent nos. 7 and 8, but some still remained.

The municipality shall pass necessary orders upon reaching the entire proceedings to its logical conclusion.

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 three months 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.)