

Item No. 5

06.09.2022
Ct-24

In The High Court At Calcutta
Constitutional Writ Jurisdiction
(via video conference)

WPA 4620 of 2022
Smt. Bratati Bera
v.
Midnapur Municipality & Ors.

Mr. Pingal Bhattacharya
Ms. Soumita Ghosh
... for the petitioner.

Mr. Sujay Bandyopadhyay
Mr. Jagajyoti Das
... for the Municipality.

Mr. Rabindranath Mahato
Mr. A.S. Roy
... for the respondent no. 4.

The petitioner has filed the present writ petition challenging the illegal act on the part of the Midnapore Municipality in sanctioning the building plan without following the provisions of law as well as the act of the private respondent in making construction in deviation of the plan that has been sanctioned.

A report was called for from the Midnapore Municipality. The same has been filed in Court today. The report is signed by the Surveyor and two Sub-Assistant Engineers as well as the Chairman of the Midnapore Municipality.

It appears therefrom that initially a building plan of B+G+3 storied structure was sanctioned in 2018 by the administration as per the Building Rules, 2007 in

favour of Sri Supriya Pratihara, respondent no. 4. Thereafter, a revised plan for construction of 4th, 5th and 6th floors over the existing B+G+3 storied residential apartment was sanctioned on December 10, 2020 with condition to provide statutory open spaces in terms of the Building Rules.

A spot inspection was conducted where the petitioner as well as the private respondent i.e. the person responsible for making construction, was present.

The report mentions that in the ground floor the space left in the Western side is 2.65 meter average (covered by tin shed) in place of 6.50 meter. In the Northern side it is 1.20 meter in place of 5 meter. In the Eastern side it is 1 meter in place of 5 meter and in the Southern side it is 1 meter in place of 5 meter.

In the 1st to 6th floor the space left open in the Western side is 1.45 meter in place of 6.50 meter. In the Northern side it is 0.95 meter in place of 5 meter. In the Eastern side it is 0.55 meter in place of 5 meter and in the Southern side it is 0.55 meter in place of 5 meter.

There is already an existing 7th floor which has been constructed as a community hall 13m X 9.6m X 3 m in height. The height of the building is 24.40m with community hall over 6th floor.

From the report that has been placed before this Court it appears that there is deviation in all the four sides of the newly constructed structure. Apart from the side deviations an extra floor on the 7th floor has been constructed as a community hall without obtaining sanction.

The report contains the attendance sheet of the petitioner as well as the private respondent. It appears that both the parties were present at the time of inspection.

A stop work notice was issued in favour of the private respondent on August 22, 2022 with a direction to stop all structural works in the building.

Learned advocate representing the private respondent disputes the report that has been filed in Court. Prayer has been made for filing an exception to the said report.

It appears from the report that has been filed in Court that there is deviation in all the four sides as well as construction of an extra floor over and above the sanctioned 6th floor.

The measurement was taken in the presence of both the parties. The private respondent never raised any issue at the time of making the measurement. By filing the exception to the report will not change the

ground level measurement which was taken in presence of both the parties.

The fact of construction of an additional floor cannot also be disputed by the learned advocate representing the private respondent.

In view of the above, the Midnapore Municipality is directed to take steps to deal with the unauthorized construction that has been made strictly in accordance with law at the earliest but positively within a period of twelve weeks from the date of communication of a copy of this order.

The writ petition stands disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties after completion of all legal formalities.

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(Amrita Sinha, J.)