

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- Hon'ble Justice Amrita Sinha

WPA No. 4760 of 2019
IA No. CAN 1 of 2020
(Old No. CAN 703 of 2020)

Smt. Lakshmi Roy

Vs.

The State of West Bengal & Ors.

For the writ petitioner	:-	Mr. Biswaroop Bhattacharyya, Adv. Mr. Pratik Majumder, Adv.
For the State	:-	Mr. Sudipto Panda, Adv. Ms. Mun Mun Tewary, Adv.
For the Municipality	:-	Mr. Amales Ray, Adv. Ms. Mousumi Bhowal, Adv. Mr. Aman Gupta, Adv.
For the respondent no. 5	:-	Mr. Shaunak Ghosh, Adv. Mr. Rajib Mullick, Adv. Ms. Shreyashi Maity, Adv.
Heard on	:-	01.07.2022
Judgment on	:-	15.07.2022

Amrita Sinha, J.:-

The petitioner claims to be the daughter of one Shyamapada Roy, since deceased, the predecessor in interest of premises no. 6A, Shyama Prasad Colony at 360, Jessore Road, Kolkata 700055. The aforesaid premises was given on lease in favour of the deceased Shyamapada Roy by a registered deed of lease executed by the Refugee, Relief and Rehabilitation Department, Government of West Bengal on 8th

September, 1983 in respect of twelve chittaks six sq. ft. of land in C.S. plot no. 2114 (P), E/P no.- 6A, S.P. no. 20/1, Mouza- Kalidaha, PS- Lake Town. The said Shyamapada Roy paid the municipal tax in respect of the aforesaid property and resided thereon by constructing a single storied structure with brick walls and tin roof.

The aforesaid premises was mutated in favour of the said Shyamapada Roy by South Dum Dum Municipality and the property was numbered as 6/1, presently 8, Shyama Prasad Colony.

The petitioner claims that the private respondents are occupiers of the adjacent plot of land. The predecessor in interest of the private respondents always tried to dispossess the said Shyamapada Roy from his own property. As a consequence, the predecessor in interest of the private respondents instituted Civil Suit being T.S. No. 249 of 1985 praying for eviction of licensee. The predecessor in interest of the petitioner entered appearance in the said Suit and after the demise of Shyamapada Roy the petitioner substituted herself in the said Suit and is contesting the same.

During pendency of the Title Suit the predecessor in interest of the private respondents took forceful possession of the suit property on 15th March, 1988. The said Shyamapada Roy filed an application for mandatory injunction for restoration of possession of the suit property on 24th June, 1989. Title Suit No. 249 of 1985 stood dismissed for default on 26th April, 2005.

An independent Suit being Title Suit No. 310 of 2008 was filed by the petitioner and her brother and sister's heirs praying for a declaration

that they are the lawful owners of the premises no. 6A, Syamaprasad Colony and the defendants have no right, title and interest over the property in any manner. A prayer has been made for restoration of possession of the property in favour of the plaintiffs.

A Civil Revision application in connection with the said Suit was filed before this Court and by an order dated 21st April, 2009 an order of status-quo was passed with regard to the creation of third party interest and/or possession in respect of the Suit property till disposal of the revisional application.

The private respondents herein disclosed their defence in the written statement wherein their stand is that the settlement made by the Refugee, Relief and Rehabilitation department in favour of Shyamapada Roy was bad and there never existed an independent premise being no. 6A, Shyama Prasad Colony.

In June 2018 it came to the knowledge of the petitioner that new construction work has been undertaken by the private respondents in the said premises. The petitioner immediately lodged a complaint before the Municipality on 2nd July, 2018 against such unauthorised construction and prayed for initiation of appropriate proceeding to demolish the illegal construction and to revoke the sanction plan, if any.

In response to the complaint filed by the petitioners, the South Dum Dum Municipality initiated appropriate proceedings. A writ petition was filed before this Court being WP No. 9560 (W) of 2018 which stood disposed of on 25th July, 2018 relying upon the report filed by the Municipality stating that there are unauthorised constructions,

directing the Municipality to invoke the provision of S. 218 of the WB Municipal Act, 1993 and complete the exercise within a stipulated time frame giving reasonable opportunity of hearing to all the parties.

The Municipality after hearing all the parties was of the opinion that the building standing on the said premises has been constructed without any sanction plan and direction was given to the private respondents to demolish the entire unauthorised construction within a specified time limit. The demolition was implemented in December, 2018.

The petitioner contends that the entire unauthorised construction has not been demolished and accordingly made repeated representations praying for demolition of the remaining portion of the unauthorised construction.

The petitioner prays for a direction upon the Municipality to forthwith demolish the entire unauthorised construction.

The petitioner lays stress on the decision taken by the Municipality on 31st October, 2018 and 30th November, 2018 wherein the Board of Councillors unanimously decided to demolish the building at 360/6, Jessore Road, Shyama Prasad Colony by the Municipality and to recover the cost of demolition from the persons responsible for making construction.

It has been submitted that the Municipality does not have any other alternative but to pass an order of demolition of the construction

standing at the aforesaid premises as the same was constructed without obtaining any plan from the Municipality.

Learned advocate representing South Dum Dum Municipality relies upon the affidavit-in-opposition filed by the Municipality wherein it has been mentioned that the two storied building newly constructed upon a part of the existing ground floor had already been demolished as the same was an unauthorised construction.

It has been submitted that the complaint of unauthorised construction was submitted by the petitioner for the first time in the year 2018. The construction which was made during that relevant point of time has been demolished by the Municipality but the old structure which is in existence for a considerable period of time has been held not to be an unauthorised one.

It has been fairly submitted that, admittedly, there is no plan for making construction over the said plot of land but as the existing structure with brick walls and tin shed is a pretty old one, the same has not been considered as unauthorised construction because in the entire colony there are several such structures which have been constructed without obtaining any sanction plan from the Municipality.

Learned advocate representing the Municipality relies upon the judgment delivered by the Hon'ble Supreme Court in ***Monnet Ispat and Energy Limited vs. Union of India and Ors.*** reported in **(2012) 11 SCC 1** paragraph nos. 197, 200 and 201 on the doctrine of desuetude and submits that the site where the alleged unauthorised construction has been made is a squatter's colony where the refugees from east

Pakistan have stayed for decades by making construction thereon. There are several instances where construction has been made without obtaining the sanction from the Municipality. This is not a solitary instance of making construction without a sanction plan. The Municipality never took any steps to demolish any construction standing in the said colony area. As and when information is received by the Municipality regarding any new unauthorised construction, the Municipality takes immediate steps to deal with the same.

It has been submitted that on receipt of a complaint alleging unauthorised construction being made by the private respondents, appropriate steps were taken by the Municipality and being satisfied that the construction was made recently without obtaining any sanction plan, the Municipality has already demolished the same.

Learned advocate representing the private respondents submits that the construction in question which was made in the year 2017-18 has already been demolished by the Municipality. The construction which is presently standing at the site is more than fifty years old.

It has been submitted that the said structure was used as a residential unit by their predecessor in interest and after the demise of the predecessor in interest, the private respondents are utilising the same as their residential unit.

It has been submitted that the private respondents do not have any other alternative accommodation to stay and the said structure is the only place where they are residing. If the said structure is demolished, then the private respondents will be rendered homeless.

I have heard and considered the submissions made on behalf of all the parties.

It appears from the said submissions and the documents annexed to the writ petition that the matter relates to construction in a squatter's colony over the land settled in favour of the settlers of the said colony by the Refugee, Relief and Rehabilitation department.

There is an issue with regard to the title of the land where allegation of unauthorised construction is made. A Title Suit in between the parties praying for declaration of title is pending consideration before the learned Court below.

The construction which the petitioner seeks demolition is in existence for nearly fifty years, if not more. The parties have admitted that the construction is in existence from nearly 1970.

The petitioner alleged for the first time on 2nd July, 2018 that the private respondents 'started illegal unauthorised construction'. In the said complaint the petitioner mentioned that the private respondents forcefully took possession of the complainant's plot on 15th March, 1988 and she filed Title Suit, after eighteen years in the year 2008, praying recovery of possession. The illegal occupier of the land started illegal unauthorised construction on the said land over which they have no legally enforceable right.

The complaint mentions that the construction was made in contravention of the provision of the West Bengal Municipal Act, 1993 as amended and various other provision of law. The complaint

conveniently never mentions about the existing construction that was in place for years together.

A bare perusal of the complaint reveals that the complainant was more bothered about dispossession rather than the unauthorised construction that has been made. Had the complainant any issue with the existing construction, then certainly a line would have been mentioned praying for demolition of the same. The complaint mentions only about the construction which started in the year 2017-18. The Municipality acceded to the complaint made by the petitioner and ultimately demolished the new construction made thereon.

The petitioner is aggrieved by the conduct of the Municipality in differentiating the construction over the said plot of land as that of 'new construction' and the 'existing construction'. It has been strongly contended that as there is no sanction plan either in favour of the old or the new one, accordingly, the entire construction, irrespective of the fact that it was in existence for quite some time, is required to be demolished.

From the tenor of the argument made by the petitioner it appears that the same has been advanced out of spite and vengeance. The parties are fighting legal battles for quite some time challenging the title of the said property. The petitioner claims that the land in question where the construction has been made was settled in favour of her predecessor in interest by registered deed of lease executed by the Refugee, Relief and Rehabilitation department; whereas, the private

respondents claim that the said plot of land was allotted in favour of their predecessor in interest by patta issued by the Government.

Though the issue of unauthorised construction does not directly relate to the title of the property, but it seems that, in the present case the same is a direct off shoot of the disputed title of the property. Had the title of the property not been in dispute, the issue of unauthorised construction possibly would not have arisen. The fact that the structure is in existence for so many years and no complaint was advanced prior to 2018 implies that unauthorised construction was never the issue but as the petitioner is out of possession for so many years she desperately intends to dispossess the private respondents from the said premises by hook or by crook.

It has been submitted by the learned advocate representing the Municipality that there are several unauthorised constructions in the said squatter's colony but the complainant made specific complaint only with regard to the construction made and possessed by the private respondents. The same implies that the complaint has been lodged with the sole intention of dispossessing the private respondents from the house which has been constructed over the said premises. If the existing construction is demolished, then the private respondents may be rendered homeless. The agony and the helpless condition of the private respondents would provide some mental satisfaction to the petitioner.

The Municipality conducted a physical inspection on site and took note of the existing as well as the new construction that has been made and has opined that the new construction was an unauthorised one and

liable to be demolished. The demolition work has been successfully completed. As per the Municipality the existing construction may not be treated as an unauthorised one.

The petitioner has not claimed that the existing structure is a new one. The thrust of the argument is that irrespective of the fact that the construction is old or new, since the same was built without obtaining a sanction plan from the Municipality, the same ought not to stand for a single day and is liable to be demolished at once. The said argument leads to the unmistakeable conclusion that it is not the unauthorised structure that is troubling the petitioner but the pinch lies somewhere else. The petitioner's desire is that the building be razed to the ground so that the private respondents are compelled to come down to the streets.

The Court is of the opinion that the decision of the Municipality is a very balanced and reasonable one. Had the Municipality held the existing structure to be unauthorised, then several litigations may have cropped up in future with similar allegations and counter allegations of unauthorised constructions in the squatter's colony. The Municipality quite consciously took the decision to demolish the new construction that has been made, without disturbing the existing one.

It is true that an illegal construction never gets regularised or legalised by passage of time, but the facts and circumstances under which such construction was made, has to be kept in mind. Unauthorised haphazard construction in squatter's colony by refugees is a persistent problem and it is for the Municipality to find a solution to

deal the menace. Demolition of a structure in the said colony which is in existence for decades along with other similar structures ought not to be singled out for demolition, at the instance of a complainant who has a vested interest in the said property.

Writ Court being a Court of equity ought not to enter and settle personal scores between the parties. The dispute herein is out and out a private one, with no public element involved. It is a circuitous way of dispossessing the private respondents from the said property. Writ Court is not the appropriate forum to adjudicate such issues. It will be highly iniquitous to entertain such a prayer and exercise discretion in the matter.

The ratio of desuetude will not be applicable in the facts and circumstances of the present case as the two factors for its applicability, namely, (i) the statute or legislation not being in operation for a considerable period and (ii) the contrary practice has been followed over a period of time are not satisfied in the present case.

In view of the discussions made herein above, the Court is of the considered opinion that, in the facts and circumstances of the present case the order of demolition impugned in the present writ application, is not required to be interfered with.

It is made abundantly clear that the construction does not get regularized in any manner whatsoever by dint of this judgment and it will be open for the Municipality to take any steps to deal with the same, in accordance with law.

The writ petition fails and is hereby dismissed. Application, if any, stands disposed of.

No costs.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)