

17.05.2022
Sl. No.11
srm

W.P.A. No. 4977 of 2020

Sri Haru Bera

Versus

Chandannagar Municipal Corporation & Ors.

Mr. Shuvra Prakash Lahiri,
Ms. Diksha Ghosh

...for the Petitioner.

Mr. Suman Basu

...for the Chandannagar
Municipal Corporation.

Mr. Swagata Datta

...for the Respondent No.5.

Report filed by the Chandannagore Municipal Corporation is taken on record.

It appears that on an inspection made by the Assistant Engineer and Surveyer of the Corporation, a construction of a toilet without permission has been detected. The inspection report further states that the existence of a common passage could not be ascertained.

Mr. Lahiri, learned Advocate appearing on behalf of the petitioner, draws the attention of the Court to a notice issued by the Engineer of the said Corporation sometime in November, 2017 upon the respondent No.5. By the said notice, the authority alleged that the construction made by the said respondent on a 8 ft. wide common passage, should be stopped.

Mr. Lahiri contends that the Corporation itself is confused as to whether there is any existence of a common passage or not and as such directions must be issued upon the authority to ensure that the pre-existing construction on the 8 ft. passage is removed. Mr. Lahiri further contends that even if the Corporation had restricted its finding with regard to the toilet, the entire construction by the respondent No.5 was illegal and unauthorised.

Mr. Datta, learned Advocate appearing on behalf of the respondent No.5, submits that the construction of a toilet was within the demarcated area of the said respondent.

Disputed facts have arisen on account of divergent views of the authorities of the Corporation. However, there is an observation that a construction of a toilet was found and the respondent No.5 could not justify such construction on the basis of available documents. This Court is of the view that the issue with regard to the allegations of the petitioner must be disposed of by a competent authority of the Corporation in accordance with law.

Under such circumstances, the allegations of unauthorised construction on Premises No.517 under Ward No.5, shall be decided in accordance with law by adopting the following procedure:-

- (a) The competent authority of the Chandannagore Municipal Corporation shall cause an inspection of the premises in question in the presence of the petitioner and the respondent No.5 (person responsible) and all other interested parties. Advance notice of the inspection shall be served upon the interested 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 interim measures by stopping such construction.
- (c) A report of such inspection shall be prepared along with the sketch map indicating the extent and nature of unauthorised construction, if any.
- (d) Such report, if prepared, shall be handed over to the parties.
- (e) A hearing shall be given to the petitioner and the respondent No.5 (person responsible) and all other interested parties. The parties must also be allowed to file their written objections/version to the said report and adduce oral and documentary evidence in support of their contentions before the competent authority. All points raised by the parties shall be decided. All documents filed by the parties, if any, shall be exchanged.
- (f) A reasoned order shall be passed and communicated to all concerned.

(g) Needless to mention, the entire proceedings shall be reached to its logical conclusion and the Corporation will be at liberty to proceed in accordance with law, if any unauthorised construction is detected.

The entire exercise shall be completed within a period of four months from the date of communication of this order.

The question of title, encroachment, boundary dispute etc. shall not be decided by the Corporation. The order is restricted to the allegation of unauthorised construction.

This Court has not gone into the merits of the claims and counterclaims of the parties and all points are left open for decision by the Corporation.

This writ petition is, thus, disposed of.

There will be no order as to costs.

All parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)