

13.01.2022
Court No. 19
Item no.11
CP

WPA 7128 of 2021

Sri Samar Majhi @ Sri Samar Kumar Majhi
Vs.
The State of West Bengal & ors.

Mr. Sanjib Seth

.....for the petitioner.

Mr. Manoj Malhotra
Mr. Sutanu Chakrabarti

....for the State.

Mr. Sandipan Banerjee
Mr. Ankit Sureka

....for the H.M.C.

The petitioner attempted to serve a copy of the writ petition on two occasions upon the respondents Nos. 8 and 9. On both occasions, the postal articles have come back with the endorsement 'insufficient address'. The petitioners contended that the respondents Nos. 8 and 9 being the owners of Holding No. 28/1, Dakshin Buxarah Road, Police Station – AJC Bose Botanical Garden, District – Howrah, have constructed unauthorizedly without any sanction plan and contrary to the rules. The petitioner has also relied upon a notice issued by the Howrah Municipal Corporation (hereinafter referred to as the corporation), to the said respondents Nos. 8 and 9 directing the said respondents to remove

and/or demolish the alleged unauthorized constructions. According to the petitioner, despite such notice having been issued by the corporation, the respondents Nos. 8 and 9 have not acted as per the direction of the corporation. It is further alleged that the corporation has since then failed to take steps against the said respondents. Mr. Banerjee learned Advocate for the Corporation submits that the Corporation issued a notice of self-demolition upon the respondents Nos. 8 and 9 and if the said respondents fail to carry out the demolition, the Corporation will demolish the structures.

The matter was heard on an earlier occasion and the corporation as also the petitioner were granted opportunity to affix a copy of the writ petition and the notice respectively on the alleged premises. The same was done as per the direction of the court. The court was of the view that the respondents Nos. 8 and 9 were avoiding service.

Today photographs which have been taken pursuant to affixation of the writ petition and a notice on the premises where the unauthorized construction is allegedly going on, have been produced before the court. The same are taken on record.

The matter is taken up in the absence of the respondents Nos. 8 and 9. In view of the fact that the

corporation has already taken steps as per the complaint of the petitioner nothing survives to be decided herein. Moreover, the respondents 8 and 9 shall get sufficient opportunity to represent their cases before the concerned authority as this court is not deciding the dispute on merits.

The writ petition is disposed of with a direction upon the competent authority of the corporation to treat the writ petition as a representation and dispose of the same in accordance with law by adhering to the following directions:

a) An inspection of the site shall be made.

Such inspection shall be held in the presence of the parties, with 48 hours advance notice to the petitioner and the respondents 8 and 9.

b) The report of the inspection shall be prepared along with the sketch map indicating the extent of deviation, if any.

c) Such report shall be handed over to the petitioner as also the respondents 8 and 9.

d) A hearing shall be given to the petitioner and the respondents 8 and 9. 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.

- e) 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 merit of the claims and counter-claims of the parties and the issues shall be decided independently.

In view of the rising pandemic situation, the entire exercise shall be completed within a period of eight 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.)