

04.04.2022
Court No. 19
Item no.13
CP

W.P.A. No. 8699 of 2021

Partha Pratim Choudhury
Vs.
The State of West Bengal & Ors.

Mr. Prasanta Kr. Banerjee
Ms. Indrani Nandi
Ms. Krishna Yadav

...for the petitioner.

Mr. Kaushik Chatterjee
Mr. Amit Singh

...for the respondent nos. 5 and 6.

Mr. Tapas Mukherjee

....for the respondent no. 3.

The respondent no. 7, who is a learned Advocate of this court, has been impleaded in person. The allegation of the petitioner is that the said respondent is the legal advisor of the respondent nos. 5 and 6 who have raised unauthorized construction on the advice of the learned Advocate. Such practice is deprecated. A learned advocate who advises his clients cannot be impleaded as a respondent with allegations from the bar, although, there are no pleadings to that effect in the writ petition.

Office is directed to expunge the name of the respondent no. 7. Cost of Rs.5000/- to be paid by the

petitioner to the respondent no. 7 within a week from date.

The respondents have prayed for dismissal as they allege that the writ petition suffers from suppression of material facts. It is submitted that the petitioner has been unsuccessful in the civil suit both before the trial court and the first appellate court with regard to his claim of title in respect of the property, which is the subject matter of dispute in this petition. A second appeal is pending before this court. Such facts have been suppressed.

The learned advocate appearing on behalf of the Kalna Municipality (hereafter referred to as 'the municipality'), submits that on enquiry it was found that a room had been constructed allegedly on the premises of the petitioner and the municipality had issued a show cause notice to the petitioner. The petitioner replied to the said show cause notice and, thereafter, filed the writ petition, before a hearing could be given.

With regard to the other allegations of unauthorized construction brought by the petitioner against the respondent no. 5 and 6, namely, construction of a boundary wall and structures which have blocked the ingress and egress of the petitioner, the municipal authorities shall act and proceed according to law.

This court does not think it necessary to make any observations on the merits of the claims and counter claims of the parties and leaves the entire matter to the municipal authorities for determination.

Under such circumstances, the writ petition is disposed of with a direction upon the municipality to act and proceed in accordance with law by adopting to the following procedure:

- a) An inspection of the disputed sites including the constructions by both the parties shall be conducted. Such inspection shall be held in the presence of the parties, with 48 hours advance notice to the petitioner and the respondent nos. 5 & 6.
- b) The report of the inspection shall be prepared along with the sketch map indicating the extent of deviation, if any.
- c) Such report, if prepared, shall be handed over to the petitioner as also the respondent nos. 5 & 6.
- d) A hearing shall be given to the petitioner and the respondent nos. 5 & 6. 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 entire exercise shall be completed within a period of four months from the date of communication of this order.

Such adjudication by the municipal authorities shall be made upon the petitioner satisfying the municipal authorities of payment of costs to Mr. Atanu Biswas learned Advocate, as per the directions in this order.

The writ petition is, thus, disposed of.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)