

S/L 14
04.04.2022
Court. No. 19
GB

W.P.A. 10165 of 2021

Sri Suman Chakraborty
VS
The Principal Secretary, Department of
Urban Development and Municipal Affairs & Ors.

Mr. Kallol Basu,
Mr. Rudraksha Chattopadhyay.

...for the Petitioner.

Mr. Moloy Krishna De,
Mr. Subir Sabud (Sabood).

...for the State.

Mr. Sankar Halder.

...for the Respondent Nos.4 to 6.

Mr. Partha Pratim Roy,
Mr. Sarbananda Sanyal.

...for the Respondent Nos.7 to 10.

The petitioner has alleged that the respondent nos.7 to 10 have raised certain unauthorized construction on holding no.9 of Bank Bye Lane within Ward No.19 of Krishnagar municipality, without a valid sanction plan. It has been alleged that the said construction has also been made contrary to the building rules, thereby blocking the entire eastern and southern portion of the petitioner's land. According to the petitioner, such construction has been made, without keeping the mandatory side spaces, open.

Mr. Roy, learned advocate appearing on behalf of the respondent nos.7 to 10 submits that the disputes between the parties was a subject matter of a civil suit. The civil suit had been dismissed and an appeal therefrom is pending. Thus, it

is prayed, that Court must not interfere with the facts as pleaded in the writ petition.

Mr. Halder, learned advocate appearing on behalf of the Krishnagar municipality submits that upon a preliminary enquiry it was found that a tin shed structure existed on the vacant land within the boundary wall beside the holding enjoyed by Aparesh Modak, the respondent no.8.

As the enquiry report furnished by the municipality does not disclose either the holding number or the details of the construction, this Court is of the opinion that the complaint lodged by the petitioner dated October 19, 2020, being Annexure-p/5 to the writ petition must be disposed of in accordance with law and reached to its logical conclusion. While disposing of the complaint, the municipal authority shall adhere to the following procedure:-

a) An inspection of the premises shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent nos.7 to 10, within three weeks. Advance notice of the inspection shall be served upon the petitioner and the respondent nos.7 to 10. If the parties are not available to accept notice, the authorities shall affix the notices of hearing and inspection at conspicuous places in their respective premises.

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 such interim measures by stopping such construction.

c) The report of such inspection shall be prepared along with the sketch map, indicating the extent and nature of unauthorized construction, if any.

d) Such report shall be handed over to the parties.

e) A hearing shall be given to the petitioner and the respondent nos.7 to 10. 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. All points raised by either party, shall be decided.

f) 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 question of title, encroachment and disputes with regard to boundary, shall not be decided by the municipality.

The court has not gone into the merits of the claims and counter-claims of the parties and the issues involved shall be decided independently.

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

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

All the parties are directed to act on the basis of the learned advocate's communication.

(Shampa Sarkar, J.)