

31.03.2022
Court No. 19
Item no.04
CP

W.P.A. No. 7002 of 2020
With
CAN 1 of 2020

Monomohon Tarafdar & ors.
Versus
Uttarpara Kotrung Municipality & Ors.

Mr. Amitabha Ghosh
Ms. Nabanita Chatterjee
Sk. Sujauddin

...for the Petitioners.

Mr. Dipak Kumar Mukerjee
Mr. Rajib Mukherjee
Ms. Supriya Dey Barat
Ms. Sreyashi Bhaduri

...for the Uttarpara Kotrung
Municipality.

Ms. Aprajita Ghosh
Ms. Aditi Roy

....for the respondent no. 7.

Although Mr. Ghosh, learned advocate appearing on behalf of the petitioners, submits that a report in the form of an affidavit had been filed by the municipal authorities, such report is not available in the record. On the last occasion, some documents were filed by the Uttarpara Kotrung Municipality (hereinafter referred to as 'the municipality'), from which it appears that the Sub-Assistant Engineer had filed a report on February 24, 2022 after holding a spot enquiry. The nature of unauthorized construction as per such report is a construction on

municipal Holding No. 222/1, B.K. Street, Uttarpara in Ward No. 15 of the municipality. The specific contention of the municipality is that the construction has been made without a sanction plan.

The respondent no. 7 on the other hand submits that Holding No. 222/1, B.K. Street, Uttarpara has been carved out of the original Holding No. 222, B.K. Street, Uttarpara by virtue of an oral partition between the heirs and legal representative of the original owner. That, prior to such partition, a plan for addition and alteration of the entire building situated at Holding No. 222 had been granted by the municipality and as such addition and alteration of the entire building situated over the original plot. No.222 now bifurcated has been made, in accordance with the sanction plan.

The petitioners deny such allegations and submit that a new construction has been raised on Holding No. 222/1, B.K. Street.

A copy of the plan has also been handed over by the respondent no. 7, which is taken on record.

However, this court is not in a position to deal either with the allegations of unauthorized construction or with the contention of the respondent no. 7, of having constructed in accordance with the permission/sanction granted by the municipality for

addition and alteration of the entire building on holding No.222 and 222/1, B.K. Street.

This writ petition is disposed of with a direction upon the competent authority of the municipality to dispose of the entire issue in accordance with law by adopting the following procedure:

- a) An inspection of the sites, i.e., holding No.222 and 222/1, B.K. Street shall be conducted. Such inspection shall be held in the presence of the interested parties, with 48 hours advance notice to the petitioners and the respondent no. 7.
- 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 petitioners as also the respondent No. 7.
- d) A hearing shall be given to the petitioners and the respondent No. 7. 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 merits of the claims and counter-claims of the parties and the issues shall be decided independently.

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

The question of title, possession and boundary dispute etc. shall not be decided by the municipality. The only question to be decided by the municipality would be whether the construction has been made without any permission and/or in violation of the building rules, on plot No.222/1, B.K. Street without permission or whether the construction was done on the basis of the permission granted in respect of the building which was standing on plot No.222, B.K. Street, now bifurcated.

The writ petition is, thus, disposed of. There shall be no order as to costs.

Accordingly CAN 1 of 2020 being an application for urgent hearing of the writ petition, is also disposed of.

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

(Shampa Sarkar, J.)