

S/L 22
22.03.2022
Court. No. 19
GB

W.P.A. 10760 of 2021

Balaram Kar
VS
The State of West Bengal & Ors.

*Mr. Golam Mastafa,
Mr. Tarasankar Samanta,
Mr. Subir Sabud,
Mr. Samir Sardar.*

...for the Petitioner.

*Sk. Md. Galib,
Ms. Subhra Nag.*

...for the State.

Mr. Gopal Chandra Das.

...for the Municipality.

Mr. Rudranil De.

...for the Respondent No.7.

The petitioner has preferred this writ petition for implementation of an order passed by this Court on March 27, 2014 in W.P. No.9378(W) of 2014. After eight years, this writ petition has been filed alleging that the municipal authorities could not execute the order of demolition in respect of the premises situated at R.S. Plot No.224 corresponding to L.R. Plot No.4129 at Padumbasan, Ward No.10 under Tamluk Municipality. Reference is made to the order of this Court which reads as follows:-

“Having heard the learned advocates for the parties, since it has been alleged by the petitioner that the private respondent no.8 has raised construction without sanctioned plan, considering such fact the writ petition is disposed of by granting liberty to the petitioner to file a representation afresh, enclosing necessary documents, before the Board of Councillors, Tamluk Municipality, the respondent no.6 shall dispose of the same by passing a reasoned order to be

communicated to the parties within eight weeks after giving an opportunity of hearing to the petitioner and to the private respondent no.8 and after verifying the records and documents, including the sanctioned plan, if any and after causing an inspection of the site in question upon notice to the parties. Prior to hearing a copy of the representation shall be furnished to the respondent no.8 to enable him to file objection and the respondent no.6 in its reasoned order shall deal with the same. If it is found that unauthorised construction has been raised, same shall be demolished in accordance with law. It is made clear that I have not gone into the merits of the matter and all points are left open to be dealt with by the respondent no.6 in the event representation is filed within the time, as stipulated. It is also made clear that I have not gone into the question of encroachment since it cannot be decided in the writ jurisdiction.”

Reference is also made to a letter written by the municipality to the Officer-in-Charge, Tamluk Police Station indicating that the demolition work undertaken by the Sanitary Inspector and other labourers of the municipality pursuant to the direction of this Court could not be completed as the respondent no.7 and his family members attacked the officials of the municipality by pelting stones and bricks. Such contention of the municipality is available in the records annexed.

The allegations are that the construction has been made by the respondent no.7 on the premises in question by violating the building Rules and as a result of such deviation and violation of the Rules, the mandatory side spaces had not been kept and the common passage and the baram path have also been encroached upon.

This Court in the earlier occasion had directed that the municipality must consider the representation of the

petitioner with regard to the allegations of unauthorized construction, but the question of encroachment was not decided.

Mr. De, learned advocate appearing on behalf of the respondent no.7 denies the allegation of attacking the municipal authorities at the time of implementation of the order of demolition. He further submits that the demolition of the unauthorized structure was completed and at that moment there are no unauthorized constructions. He submits that the dispute with regard to the encroachment upon the baram path and common passage are subject matters of a civil suit and as such, neither the writ court nor the municipal authorities have any jurisdiction to adjudicate such issue.

Mr. Das, learned advocate appearing on behalf of the municipality submits that the records are not available but the fact that a civil suit is pending with regard to the common passage and the baram path, is not in dispute.

Under such circumstances, as the dispute is an old one, this Court is of the opinion that the municipal authorities must dispose of the demand of justice made by the petitioner through his learned advocate dated February 26, 2020 in accordance with law upon hearing the respective parties. The question of unauthorized construction and the adjudication thereof are not within the power of the civil court. The civil court may deal with the issues of title, encroachment, recovery of possession, boundary disputes etc., but it is only the municipal authority, which can deal

with the unauthorized construction. The competent authority of the municipality shall only decide the question as to whether the construction has been made in accordance with the plan and the building Rules. The other issues which are subject matter of the civil suit shall be disposed of independently by the learned civil court and this order shall not prejudice the disputes involved in the civil suit.

While disposing of the matter, the competent authority of the Tamluk Municipality shall adhere to the following procedure:-

a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent no.7, within three weeks. Advance notice of the inspection shall be served upon the petitioner and the respondent no.7. 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 the 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 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. All points raised by either party, shall be decided. The respondent no.7 shall also be entitled to produce the documents to show that the earlier order of demolition had been implemented.

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 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.)