

S/L 6
22.03.2022
Court. No. 19
GB

W.P.A. 11128 of 2019

Tapan Halder
VS
The State of West Bengal & Ors.

Mr. Dilip Kumar Maity.

...for the Petitioner.

*Mr. Abu Sufian,
Mr. Biswajit Dutta.*

...for the State.

*Mr. Subhrajit Saha,
Mr. Pradip Pal.*

...for the Respondent No.6.

*Mr. Biswajit Mukherjee,
Mr. Subhrangsu Panda.*

...for the K.M.C.

The petitioner is one of the sons of deceased Maniklal Halder, who had an interest in the premises situated at 2126A, Vidya Sagar Sarani under Ward No.124 of the Kolkata Municipal Corporation.

The petitioner alleges that the respondent no.6 has raised an unauthorized construction in the car parking space without permission from the authorities. Reliance has been placed on a decision of the Assessor Collector (South Suburban Unit) dated January 31, 2019. There are some observations in the said order with regard to the change of user of a car parking space to a dwelling unit without any permission.

The respondent no.6 had also submitted before the Assessor Collector, at the hearing, that an application for regularisation had been filed before the Corporation, which was pending. However, the Assessor Collector did not decide on merits, but granted liberty to the parties to move the

appropriate forum. The petitioner now submits that on the basis of such liberty, a complaint was lodged before the Corporation on March 29, 2019, which is Annexure-P/5 to the writ petition. The Corporation has not proceeded on the basis of such complaint. Hence, the interference of this Court has been prayed for.

Mr. Saha, learned advocate appearing on behalf of the respondent no.6 submits that the petitioner does not have any *locus* to file the writ petition. That the father of the petitioner was the owner of a flat in the premises and the names of the heirs of the deceased had not been mutated. As such, the writ petition should be dismissed. The next contention is that the father of the petitioner has moved this Court on the self-same cause of action, and the writ petition had been dismissed for default. It is submitted that the writ petition should not be entertained on this ground as well. He further submits that an application for regularisation of the dwelling unit is pending before the Corporation.

Heard the learned advocates for the parties. The writ petition that was filed by the father of the petitioner had been dismissed for default. Thereafter, the petitioner moved this Court on certain grounds and such application was accepted by the Court and necessary orders were passed. On the basis of the direction of this Court, the Assessor Collector passed the order dated January 31, 2019. As of now, no writ petition is pending under the self-same cause of action. The petitioner has prayed for a direction upon the Corporation to dispose of the complaint filed with regard to the alleged

unauthorized construction. The petitioner is one of the heirs of the deceased Maniklal Halder. Respondent no.7 is the wife of the deceased Maniklal Halder. Both the petitioner and the respondent no.7 have a claim over a portion of the property in question along with other heirs, if any. Even if, there are other legal heirs, the right of the petitioner to the property of the father cannot be negated and as such, the petitioner has every right to point out any irregularity in the construction that has taken place in the same building, in which the father of the petitioner had a flat and the petitioner as one of the heirs has also inherited a share in the flat. It is submitted that the respondent no.7 (widow) is residing in the same premises.

Thus, the point of maintainability of the writ petition at the instance of the petitioner is accepted by the Court. It appears that the Corporation has not yet decided either the complaint of the petitioner or the application of the respondent no.6 for regularisation of the construction of the respondent no.6 in the car parking space. The civic body has a duty to ensure that unauthorized constructions do not take place. The civic body has also the power to allow regularisation/retention of minor deviation. Thus, when the law imposes a duty upon the civic body, the said duty should be discharged in accordance with law. In the opinion of the Court, the complaint of the petitioner must be disposed of along with the application of the respondent no.6 for retention and the regularisation. While disposing of the said application of the respondent no.6 and the complaint of the

petitioner dated March 29, 2019, the competent authority of the Corporation shall proceed in the following manner:-

a) An inspection of the premises shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent no.6, within three weeks. Advance notice of the inspection shall be served upon the petitioner and the respondent no.6. 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 no.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. 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 court has not gone into the merits of the claims and counter-claims of the parties and the issues involved shall be decided independently. This order shall not be construed as a declaration of the right of the respondent no.6 to get his premises regularized. The Corporation shall proceed in accordance with law, by applying the regulations and the parameters which are usually applicable in such cases.

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.)