

7.4.2022  
Court No. 19  
Item No. 8  
sn

WPA 13490 of 2021

Kudrat Ali Saha & Anr.  
Vs.  
The State of West Bengal & Ors.

Mr. Debasish Roy  
Mr. Sukhendu Bikash Mukherjee  
...for the petitioners

Mr. Nilanjan Adhikari ..for the respdts. 2-4

Mr. Soumik Ganguli  
Mr. S. Nandy ..for the respdts.8&9

The petitioners allege that taking advantage of the order passed in C.O. 351 of 2020 dated February 26, 2021, the respondent nos. 8&9 have raised certain constructions without permission from the Contai municipality and in violation of the building rules.

This Court had directed that the parties should restrict their constructions to their respective areas. However, Mr. Roy, learned advocate for the petitioners submits that taking advantage of the said order, the construction has been made in such a way, that egress and ingress into the petitioners' property, has been blocked.

Mr. Ganguly, learned advocate for the respondent nos. 8&9 submits that the construction is being made under the Pradhan Mantri Awaas Yojana.

Mr. Adhikari, learned advocate for the municipality submits that the municipality is yet to determine as to whether such construction is being made under the Pradhan Mantri Awaas Yojana and if at all, whether such construction was in accordance with the approved drawing of the authority. He further submits that the building rules as applicable in general, do not apply mutatis mutandis to constructions under a special scheme. Some rules are followed and primarily the municipalities supervise such construction. He refers Rule 56 of the West Bengal Municipal Building Rules, 2007.

Having heard the learned advocates for the respective parties, this Court is of the opinion that as an allegation has been made of some unauthorized construction, the municipal authority shall enquire into the matter and come to a decision as to whether the said construction is under the Pradhan Mantri Awaas Yojana or not and if so whether the drawing and/or the approved plan supplied by the authorities have been followed. The municipalities will also consider whether the relevant rules applicable in such cases are being followed or not.

While disposing of the issues involved, the competent authority of the contai municipality shall adopt the following procedure:-

a) An inspection of the premises shall be conducted. Such inspection shall be held in the presence of the petitioners and the respondent nos.8&9 and all other interested parties. Advance notice of the inspection shall be served upon the petitioners and the respondent nos. 8&9. 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 petitioners and the respondent nos.8&9. 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 documents relied upon by the respective parties shall be exchanged.

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.)**