

23.03.2022
Court No. 19
Item no.10
CP

W.P.A. No. 13542 of 2021

Sankari Pan
Versus
The State of West Bengal & Ors.

Mr. Debdas Khanna
Mr. Himadri Sikhar Chakraborty
Ms. Barnali Gantait

...for the petitioner.

Mr. Rajarshi Basu
Mr. P.K. Bhattacharya

....for the State respondents.

Affidavit of service is taken on record.

Despite service, none appears either on behalf of the Chandrakona Municipality or on behalf of the respondent no. 6.

The matter is disposed of in the absence of the said respondents as no mandatory directions are being passed against the said respondents.

The entire issue is being relegated to the competent authority of the Chandrakona Municipality with a direction upon them to act and proceed in accordance with law by considering the complaint of the petitioner dated July 22, 2021. Adequate opportunity of hearing shall be given to all the parties.

It is alleged that the respondent no. 6 has been raising some construction on L.R. Plot No. 160 of Mouza Chandrakona which is adjacent to the plot of the petitioner. The allegation is that although, the municipal authorities have issued a sanction in favour of such construction, the mandatory vacant space required to be maintained between the petitioner's premises and the premises where the construction is going on, has not been maintained.

Thus, according to Mr. Chakraborty, learned advocate appearing on behalf of the petitioner, the construction is in violation of the building rules. Such violation of the building rules, has obstructed the ingress and egress of the petitioner to and from her premises and has also obstructed the passage of light and air.

Admittedly, a sanction has been granted to the respondent no. 6 for such construction. The only issue relevant at this stage, is whether the construction has been made in accordance with the permission and the building rules.

The writ petition is disposed of by relegating the entire issue to the municipal authorities for a decision in accordance with law. While disposing the same the following procedures shall be adhered to:

- a) An inspection of the site shall be conducted. Such inspection shall be held

in the presence of the parties, with 48 hours advance notice to the petitioner and the respondent no. 6.

- 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 petitioner as also the respondent no. 6.
- d) 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.
- 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 merit of the claims and counter-claims of the parties and the issues shall be decided independently.

The question of title, possession and boundary dispute etc. shall not be decided by the municipal authorities. The only question to be decided by the

municipal authorities would be whether the construction has been made without any permission and/or in violation of the building rules.

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

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

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

(Shampa Sarkar, J.)