

10.02.2022
Court No. 19
Item no.04
SRM/CP

WPA 13981 of 2021

Parbati Chakraborty & Ors.
Vs.
The State of West Bengal & Ors.

Ms. Nibedita Chakraborty

..for the petitioners

Mr. Sandipan Banerjee
Mr. Ankit Sureka

....for the H.M.C.

Mr. Jahar Dutta
Mr. Bipin Ghosh

....for the State.

Mr. Mahendra Prasad Gupta
Mr. D.K. Saila
Mr. Ayan Mitra
Ms. Antara Panja

....for the private respondent.

The learned advocate, appearing on behalf of the Howrah Municipal Corporation (hereinafter referred to as 'the corporation'), has filed its report. A copy of which is taken on record. From the said report it appears that a preliminary inspection was made and it was found prima facie that there existed some unauthorized construction. On the basis thereof, the corporation had also heard the parties.

The writ petition involves allegations of unauthorized construction by the respondent no. 6

on L.R. Dag No. 521, Mouza – Jagacha, pertaining to L.R. Khatian No. 2308. It is the contention of the petitioners that although the corporation had initiated a proceeding in 2017, thereafter, the entire proceeding had been kept in a state of suspended animation. No steps have been taken by the authorities to demolish the unauthorized construction.

Mr. Gupta, learned advocate appearing on behalf of the respondent no. 6, submits that initially the plan was for the ground floor but, thereafter, the respondent no. 6, had prayed for extension of further floors and, accordingly, fees have already been deposited.

From the report filed by Mr. Banerjee, learned advocate appearing on behalf of the corporation, it appears that there are some unauthorized construction.

Thus, the writ court is not the proper forum to decide the disputed questions of fact involved with regard to the allegations and counter-allegations of the parties. The writ petition is disposed of with a direction upon the competent authority of the corporation to dispose of the complaint of the writ petitioners as stated in the writ petition by adhering to the procedure laid down hereinbelow:

- 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.

Any application or prayer etc. filed by the respondent no. 6 shall also be disposed of simultaneously.

The court has not gone into the merit of the claims and counter-claims of the parties and the issues shall be decided independently by the corporation.

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

The question of title, possession and encroachment etc. shall not be decided by the corporation. The enquiry of the corporation shall be restricted to detection of unauthorized construction and the consequences that should follow upon detection of such unauthorized construction.

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.)