

06.04.2022
Court No. 19
Item no.09
CP

W.P.A. No. 14057 of 2021

Sri Bimal Kumar Das
Versus
The State of West Bengal & Ors.

Ms. Pompey Bose
Mr. Sourav Koley
...for the Petitioner.

Mr. Sounak Bhattacharya
Mr. Sounak Mandal
...for the respondent no. 8.

Mr. Manas Kundu
Mr. Debabrata Mondal
....for the State.

Mr. Sandipan Banerjee
Mr. Ankit Surekha
Mr. Sobhan Majumder
....for the H.M.C.

The petitioner alleges that the respondent no. 8 has raised an unauthorized G + 2 storeyed building at premises No. 101/3, Laxminarayan Tola Road within the jurisdiction of the Howrah Municipal Corporation (hereinafter referred to as 'the corporation'). The allegation is that the entire structure is without a sanction and the structure has also encroached into a common passage. A complaint has been lodged through the learned advocate of the

petitioner before the Commissioner of the corporation on April 15 , 2021.

Mr. Bhattacharya, learned advocate appearing on behalf of the respondent no. 8, submits that the question as to whether the passage over which such construction has been made was a common passage or the exclusive property of the respondent no. 8, cannot be decided by the corporation. The claim over the common passage is to be decided by an appropriate civil court. He further points out that a civil suit is pending with regard to the said passage.

Be that as it may, as the allegation is of raising a construction without any sanction, the corporation must immediately take steps in accordance with law and reach the said complaint of the petitioner to its logical conclusion. While doing so, the corporation shall follow the following procedure:

- a) An inspection of the premises 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. 8.
- 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 the inspection shall be prepared along with the sketch map indicating the extent of deviation, if any.
- d) Such report shall be handed over to the petitioner as also the respondent No. 8.
- e) A hearing shall be given to the petitioner and the respondent No. 8. 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.
- 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 shall be decided independently.

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

The question of title and boundary dispute etc. shall not be decided by the corporation. The only question to be decided by the corporation would be whether the construction has been made without any permission and/or in violation of the building rules.

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.)