

6.12.2022

ks
sl. 36

WPA 14267 of 2021

Miraj Seikh
Vs
The State of West Bengal & Ors.

Mr. Dyutiman Banerjee,
Sk. Saifuddin
... For the Petitioner.

Mr. Usuf Ali Dewan,
Mr. Asif Dewan
... For the Respondent No.5.
Mr. Narayan Chandra Bhattacharyya,
Ms. Sujata Ghosh
... For the State.

The petitioner is aggrieved by the order dated 16th March, 2021 passed by the Chairman Jangipur Municipality. The matter was taken up for consideration by the Municipality in compliance of the direction passed by this Court on 23rd September, 2019 in WP 17456(W) of 2019.

The Chairman opined that the private respondent made construction of building in plot No.929 after obtaining sanctioned plan in his recorded plot and the said construction cannot be treated as unauthorised construction.

The petitioner submits that the private respondent is not the owner of plot No.929 and the private respondent has tampered with the record of rights.

It has been submitted that the private respondent does not have any deed in respect of plot No.929.

The petitioner further submits that the Municipality acted contrary to Rule 11(3) of the West Bengal Municipal (Building) Rules, 2007, which mentions that copy of the deed, deed plan and possession certificate are required for making application for permission to construct building.

Learned Advocate representing the private respondent denies the submission of the petitioner.

Learned Advocate representing the Municipality submits that as the name of the private respondent is recorded in the record of rights, accordingly the Municipality sanctioned plan in favour of the private respondent and construction has been made by the private respondent in accordance with the sanctioned plan.

It appears from the submission made on behalf of the parties that the private respondent made construction on plot No.929 after obtaining sanctioned plan in respect of the said plot.

It does not appear from the order sheet that the Municipality has verified the title deed of the plot in question. The Municipality primarily relied upon the certified copy of the record of rights.

The Municipality presumed the ownership of the private respondent in respect of plot No.929 on the

basis of the record of rights produced before the said authority at the time of hearing.

The Municipality ought to have verified as to whether the party possessed the title deed(s) in respect of the plots where application was made for sanction of plan for construction of building.

The record of rights relied upon by the parties suggests that both the petitioner as well as the private respondent have share in the disputed plot of land. It has been submitted that the plot is not demarcated.

The Municipality is, accordingly, directed to verify and ascertain as to whether the provision of Rule 11(3) as mentioned hereinabove was strictly followed at the time of sanction of the plan for making construction.

An opportunity be given to both the parties to produce relevant documents in support of their claim of ownership.

The Municipality is directed to revisit the issue once again in the line of the observation made hereinabove after giving reasonable opportunity of hearing to both the parties at the earliest, but positively within a period of eight weeks from the date of communication of this order.

The Municipality shall pass a reasoned order and communicate the same to the parties immediately thereafter.

In the event the Municipality is of the opinion that the Rule mentioned hereinabove was not followed, then necessary consequential steps shall be taken to rectify the error.

The writ petition stands disposed of.

Instructions given by the Municipality retained with the record.

Urgent certified photocopy of this order, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)