

03.01.2022
Court No. 19
Item no.17
CP

WPA 15791 of 2021

Jamila Khatoon & ors.
Vs.
The State of West Bengal & ors.

Mr. Bimlesh Kumar Jain

.....for the petitioners.

Mr. Subhrangshu Panda
Mr. Abhisek Sikder

.....for the K.M.C.

Mr. Sabyasachi Chatterjee

....for the respondents Nos. 8 to 10.

Mr. Lalit Mohan Mahata
Mr. Supratim Dhar

....for the State respondents.

This writ petition has been filed alleging unauthorized construction by the respondents Nos. 8 to 10.

Mr. Chatterjee, learned advocate appearing on behalf of the respondents 8 to 10, submits that a civil suit is pending on the self-same cause of action, and as such, the reliefs prayed for in the writ petition for a direction upon the Kolkata Municipal Corporation to take steps against the alleged unauthorized constructions on Plot No. C/69 and C/14, which is also known as F/203, situated at Premises No. 98,

Satin Sen Sarani, Kolkata – 700054 and for demolition of the same, could not be allowed.

Mr. Panda, learned advocate appearing on behalf of the Kolkata Municipal Corporation, submits that an inspection was made and some steel structures with tin sheds have been found in the property in question, which are used as godowns.

Mr. Chatterjee, raises a serious objection with regard to the locus of the petitioners and submits that the petitioners do not have any connection with the alleged construction and, as such, the writ petition was not maintainable at their instance. He further submits that the petitioners have also filed a suit on the self-same cause of action but suppressed the said fact in the writ petition. According to him, unless the writ petitioners come before this court with clean hands, the question of entertaining the writ petition would not arise.

Mr. Mahata, learned senior advocate appearing for the State, submits a report prepared by the police authorities from which it appears that the police authorities have been keeping a vigil in the area to ensure that there was no law and order problem. The copy of the plaint and the report of the police authorities are taken on record.

I have perused the pleadings. In paragraph 8 of the writ petition, it has been categorically stated that

the petitioners have filed a Title Suit before the learned Civil Judge (Junior Division), Sealdah being Title Suit No. 280 of 2021. A copy of the plaint which is before this court clearly indicates that the suit is for declaration of right, title and interest of the petitioners in respect of the said land in question. No prayers have been made with regard to the unauthorized construction. The pleadings as contained in the plaint reveal that the petitioners have complained of encroachment and have denied the title of the respondents Nos.8 to 10 in respect of the suit property.

Thus the allegation of Mr. Chatterjee of suppression of the factum of pendency of the suit is not acceptable to the court. With regard to the allegations of unauthorized construction, it is the Corporation which is authorized under the law to take steps if any complaint is made of like nature. The contention of Mr. Chatterjee that unless the petitioners plead prejudice and also show that the public have suffered due to such unauthorized construction, the complaints of unauthorized construction cannot be entertained, is also not acceptable to the court. The petitioners are running their motor repairing business from the portion of the premises in which the alleged constructions have been made and as such they have a right to ensure

that the authorities should act in accordance with law by preventing unauthorized constructions. Moreover unauthorized construction is a public wrong. Anyone can approach the authority complaining of such unauthorized construction. A responsible citizen can always approach the authority alleging violation of law and the authority is duty bound to take cognizance of such complaint and act in accordance with law. Where public interest and public wrong are involved, question of locus of the complainant shall not be strictly viewed. The petitioners having interest in a portion of the property where the alleged construction has been made. They have a right to compel the Corporation to perform its duty imposed by the statute. A co-ordinate Bench of this court in WPA 740 of 2021, Smt. Banasri Mondal v. State of West Bengal & ors., held as follows:

“The contention of the private respondents that the petitioner does not have any locus standi to move the instant writ petition is not acceptable. It is the bounden duty of all citizens to abide by the laws of the country and take all necessary steps to act in accordance with law. Any responsible citizen is always free to draw the attention of the concerned statutory authority seeking prevention of commission of any illegal activity including, unauthorized construction being carried on in a given premises. It is the noble duty of a law abiding citizen to intimate the controlling authority as regards any illegal act being committed or in the process of being committed. It is practically

impossible for statutory authorities to keep track of all activities that are going on in the society. The general public acts as the eyes and ears of the authorities. On receipt of any information alleging commission of an illegal or arbitrary act, the authorities should verify the same and then act according to law. An objection raised by a stranger, alleging unauthorized construction will be maintainable to a limited extent only to check whether there has been any unauthorized construction, provided the same is not mala fide and not tainted with malice. Law is well settled that the Corporation may even take steps suo motu if any unauthorized construction is detected by them. Accordingly, the objection raised by the private respondents challenging the locus standi of the petitioner in filing the instant writ petition stands overruled.”

Under such circumstances the writ petition is disposed of with the following directions:

- a) An inspection of the premises shall be held.
Such inspection shall be held in the presence of the parties, with 48 hours advance notice.
- b) The report of the inspection shall be prepared and handed over to the parties.
- c) A hearing shall be given to the parties. The parties must also be allowed to furnish their written version and make oral submissions as also adduce evidence in support of their contentions.
- d) 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 correctness of the claims and counter-claims of the parties and all the disputes shall be decided in accordance with law and independently by the Corporation.

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

This order shall not prejudice the suit in any way and the suit shall proceed on the basis of the pleadings and evidence.

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.)