

S/L 16
21.02.2022
Court. No. 19
GB

W.P.A. 16544 of 2021

Rabin Maity
VS
The State of West Bengal & Ors.

*Mr. Siva Prasad Ghosh,
Mr. Abhishek Shaw.*

...for the Petitioner.

*Mr. Pantu Deb Roy,
Mr. Subrata Guha Biswas.*

...for the State.

*Mr. Partha Sarathi Bhattacharyya,
Mr. Atarup Banerjee,
Mr. Uday Narayan Betal,
Mr. Raju Bhattacharyya,
Mr. Saikat Chatterjee,
Mr. Tanweer J. Mandal,
Mr. Surath Choudhury.*

...for the Respondent No.6.

Mr. Soumya Banerjee.

...for the Municipality.

The petitioner has challenged an order of demolition communicated by the Chairman, Kamarhati Municipality dated September 29, 2018 as also the communication dated September 21, 2021.

By the letter dated September 29, 2018, the petitioner was informed that the Board of Councillors had decided that there have been illegal constructions by the petitioner and the same must be demolished. It has been categorically mentioned in the communication that the Chairman, Kamarhati Municipality was of the opinion that the issue with regard to illegal construction shall be decided first and thereafter, the issue with regard to the illegal user of two water connections shall be decided. With regard to the

communication dated September 21, 2021 the Chairman, Board of Administrators of the concerned Municipality had further instructed the petitioner to demolish the illegally constructed meter room. The challenges to the communications are as follows:

- a) That the extent of unauthorized construction has not been mentioned in the communication dated September 29, 2018.
- b) That no inspection was held in order to detect the extent and the nature of unauthorized construction.
- c) The answers given to the respondent no.6 under the Right To Information Act were not sacrosanct and on the basis thereof, an inspection ought to have been made in the presence of the parties so that the parties against whom steps were being taken under the law and as per the order of this Court, were made aware of the reasons why he was being proceeded against.
- d) That the authorities were confused with regard to the nature of unauthorized construction and had given three reasons at different points of time, namely,
 - i) Unauthorized construction in violation of the rules;
 - ii) Two water connections in the same premises; and
 - iii) Unauthorized construction of a meter room.

Mr. Bhattacharyya, learned senior advocate appearing on behalf of the respondent no.6 submits that the order was passed on the basis of orders dated November 18, 2013 and July 11, 2018 passed by this Court. Mr. Bhattacharyya further submits that the petitioner all along has been making illegal constructions and also covered up the common passage.

Mr. Banerjee, learned advocate appearing for the Municipality submits that inspections were made and on the basis thereof, the orders have been passed.

Although, the order of demolition is an appealable order, the writ petition is entertained on the ground of violation of natural justice and also on the ground that there are procedural irregularities in the entire process, which culminated into the passing of the order of demolition.

It does not appear from the records that any inspection was made in the presence of the parties, especially in presence of the petitioner, in order to ascertain the nature and extent of unauthorized construction. The report under the Right to Information Act, was based on the records. The petitioner did not get any chance to either contest or refute such information. The orders impugned are not only lacking in material particulars but also devoid of reasons. The orders also would not impress any reasonable man. The findings arrived at by the authority are not in accordance with law and arbitrary. Article 14 has been violated.

Under such circumstances, the orders/communications dated September 29, 2018 and September 21, 2021 are set aside and quashed. However, it

appears from the record that there has been a continuous allegation against the petitioner of raising unauthorized construction. The matter has been protracted since 2019 by several litigations.

Under such circumstances, the writ petition is disposed of with a specific direction upon the competent authority of the concerned Municipality to act and proceed in accordance with law and dispose of the allegations against the petitioner, with regard to unauthorized constructions, installation of two water connections and construction of a meter room.

While disposing of the issues involved, the competent authority of Municipality shall adhere to the following procedure:-

a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondents within three weeks. Advance notice of the inspection shall be served upon the petitioner and the respondents and all other interested parties. If the parties are not available to accept notice, the authorities shall affix the notice of hearing and inspection at conspicuous places in their respective premises.

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 such inspection shall be prepared along with the sketch map, indicating the extent and nature of unauthorized construction, if any.

d) Such report shall be handed over to the parties.

e) A hearing shall be given to the petitioner and the respondents. 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 merits of the claims and the issues involved shall be decided independently.

None of the parties shall be given unnecessary adjournment either during the inspection or during the hearing.

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

Accordingly, the writ petition is disposed of.

There will be however no order as to costs.

All parties are directed to act on the basis of server copy of this order and/or the learned advocate's communication.

(Shampa Sarkar, J.)