

12.04.2022
Court No. 19
Item no.21
CP

W.P.A. No. 17055 of 2021

Hayadar Majabin @ Majabin Hayader @
Mahjaben Haider & anr.

Vs.

The State of West Bengal & ors.

Mr. Shamik Chatterjee
Mr. Aditya Bikram Mahata

...for the petitioners.

Mr. Susanta Pal
Ms. Ananya Neogi

....for the State.

Mr. Sankha Subhra Ray

...for the respondent nos. 3 to 5.

Affidavit of service is taken on record.

Despite service, none appears on behalf of the
respondent nos. 9 to 12.

The petitioners have alleged that the
respondent nos. 9 to 12 have made certain
unauthorized construction on the premises situated
at 102, Mackenzie Road (Purba), Kamarhati,
Belgharia.

The learned advocate appearing on behalf of
the Kamarhati Municipality (hereinafter referred to as
'the municipality'), submits that a Title Suit is
pending between the parties before the learned Civil
Judge (Junior Division) at Sealdah being Title Suit

No. 344 of 2002. It is further submitted that the municipality upon inspection had detected that an unauthorized construction at the instance of the respondent nos. 9 to 12 was going on. A 'stop work' notice as also a show cause notice were issued. The parties were directed to appear before the competent authority for a hearing. However, at the time of hearing, parties broke into fight and the hearing was cancelled. The municipality also submits that in view of the volatile situation in an around the area, it was unsafe for the officers of the municipality to discharge their duties, independently.

As the municipality has already, *prima facie*, detected unauthorized construction and the police authorities have also been intimated by the municipality to stop such unauthorized construction, this court is of the opinion that the matter must be disposed of with a direction upon the competent authority of the municipality to act and proceed in accordance with law, by reaching the proceedings already initiated to its logical conclusion.

Disposal of this matter in the absence of the respondent nos. 9 to 12, shall not cause any inconvenience to the said respondents, as the entire matter is being relegated to the municipality for necessary action.

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

- 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 petitioners and the respondent nos. 9 to 12. If the parties are not available for service of the notice, the notice shall be affixed at a conspicuous place at the premises in question.
- 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 petitioners as also the respondent nos. 9 to 12.
- e) A hearing shall be given to the petitioners and respondent nos. 9 to 12. 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 Commissioner of Police, Barrackpore Police Commissionerate shall ensure that his officers render adequate assistance to the municipality as and when required.

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.)