

S/L 3
14.02.2022
Court. No. 19
GB

W.P.A. 17946 of 2021

Maqsudur Rahaman
VS
Maheshtala Municipality & Ors.

Mr. Indrajit Bhattacharjee.
...for the Petitioner.

Mr. Raghunath Chakraborty,
Mr. U.K. De.
...for the Maheshtala Municipality.

Md. Shamim Halder,
Mr. S. Shah.
...for the Respondent Nos.5 & 6.

Affidavit-of-service filed in Court today be kept with the record.

None appears on behalf of the respondent no.7 despite service of notice by the petitioner.

This writ petition has been listed on an urgent basis at the behest of the respondent nos.5 and 6.

The allegation of the petitioner is that the Maheshtala Municipality has not taken any steps despite the complaint lodged by the petitioner on September 28, 2021 alleging that a G+4 storied building was being constructed, without any permission on a Government land being Dag No.116 pertaining to Khatian No.585, Mouza-kPaharpur near Santoshpur Bazar, which was within the jurisdiction of the Maheshtala Municipality.

It is submitted by Mr. Bhattacharjee, learned advocate for the petitioner that after the writ petition was filed, some officials of the Maheshtala Municipality had made an

inspection of the premises in question, but thereafter, no further steps have been taken. Photographs of the alleged unauthorized construction have also been annexed to the writ petition in order to demonstrate before the Court the extent of the construction, which has allegedly been made without proper permission and in contravention of the building rules.

Mr. Shah, learned advocate appearing on behalf of the respondent nos.5 and 6 submits that the said respondents, namely, Sk. Kabiruddin and Sk. Sairuddin do not have any connection with the alleged construction.

The matter is being taken up in the absence of the respondent no.7 solely for the reason that the Court is not passing any orders against the said respondent. The Court is relegating the entire issue to the Maheshtala Municipality for an enquiry in accordance with law upon hearing all the interested parties. As the respondent nos.5 and 6 do not take any responsibility for the construction, the municipal authorities shall not be required to hear the said respondents and will further proceed and enquire into the matter in their absence.

The writ petition is disposed of with liberty to the petitioner to approach the competent authority of the Maheshtal Municipality, by filing an appropriate application. The allegations which have been raised in this writ petition shall be stated in detail in the said representation. On receipt of the said representation, the competent authority of the

Maheshtala Municipality shall dispose of the same by adhering to the following procedure:-

a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioner, the respondent no.7 and other interested parties, within three weeks. Advance notices of the inspection shall be served upon the 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 petitioner as also the person(s) responsible.

e) A hearing shall be given to the petitioner and the respondent no.7 and all other interested parties. 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 allegations and the issues involved shall be decided independently.

g) The proceedings to be initiated by the Maheshtala Municipality shall be restricted to the allegation of an unauthorized construction on a Government land.

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.)