

S/L 23
08.03.2022
Court. No. 19
GB

W.P.A. 18546 of 2021

Niku Mahali
VS
The State of West Bengal & Ors.

*Mr. Soumen Kumar Dutta,
Ms. Arpita Kundu.*

...for the Petitioner.

*Mr. Lalit Mohan Mahata,
Mr. Rudranil De.*

...for the State.

*Mr. N.C. Bihani,
Mr. Dwijadas Chakraborty.*

...for the K.M.C.

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

Despite service none appears on behalf of the respondent nos. 6 to 10.

The respondent nos.8 to 10 claim to be landlords in respect of the premises no.9/1, Bamanpara Lane, Police Station – Karaya, Ballygaunge, Kolkata – 700019. The petitioner claims to be a thika tenant. On the contrary, the respondent nos.6 and 7 also claim to be the heirs of the original thika tenant in respect of the said premises.

Disputes cropped up when the respondent nos.6 and 7 tried to raise some construction upon obtaining a no objection from the thika controller. Subsequently, the no objection was cancelled. The construction was directed to be stopped by the Corporation.

Mr. Bihani, learned advocate appearing on behalf of the Corporation has handed over a report, which shows that

a stop work notice was issued. The matter was informed to the local police station. The process of initiating a proceeding under Section 400(1) of the Kolkata Municipal Corporation Act, 1980, is in progress.

It is submitted by Mr. Dutta, learned advocate appearing for the petitioner, that despite the stop work notice rampant construction is going on. He submits that the construction should be stopped immediately and the Corporation must be directed to act and proceed in accordance with law.

The records also reveal that the respondent nos.8 to 10 initially had raised objection with regard to the construction and on the basis of such objection, the no objection certificate granted by the thika controller was withdrawn.

This Court is of the opinion that as the Corporation has already taken steps, no order needs to be passed in this writ petition, save and except, that the Corporation must be directed to reach the proceeding to its logical conclusion in accordance with law in compliance of the principles of natural justice and all interested parties, namely, the petitioner, respondent nos.6 to 10 and/or their representatives shall be heard at every stage of the proceeding. The Corporation shall dispose of the matter by adhering the following procedure:-

- a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent nos.6 and 10 within three weeks.

Advance notice of the inspection shall be served upon the petitioners and the respondent nos.6 and 10 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 petitioners and the respondent nos.6 and 10. 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. All points raised by either party, will be decided.

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 the issues involved shall be decided independently.

As this Court has decided not to pass any mandatory directions on the merits of the case and relegates the parties to the statutory authority for adjudication of the disputes, the matter is disposed of in the absence of the said respondents No. 6 to 10 as the rights of the respondents to make their submissions, file their documents and support their respective cases, have been preserved.

The police report and the report of the Corporation are taken on record. From the report, it appears that at present no construction work is going on in the said premises. The question of title and possession etc shall not be gone into.

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

Accordingly, the writ petition is disposed of.

This order shall not be a recognition of the claim of the petitioner to be a thika tenant in respect of the property in question.

However, there will be no order as to costs.

All the parties are directed to act on the basis of the learned advocates' communication.

(Shampa Sarkar, J.)