

01.04.2022
Court No. 19
Item No.05
CP

WPA No. 18981 of 2021
with
CAN 1 of 2022

Sri Susanta Sarkar
Vs.
Rishra Municipality & ors.

Mr. Srijib Chakraborty
Mr. Avirup Mondal
Mr. Anand Jha

....for the petitioner.

Mr. Rajendra Chaturvedi

...for the municipality.

Mr. Raja Saha
Mr. Amit Kr. Ghosh

....for the State.

Mr. D. Aditya

....for the respondent nos. 11 to 15.

CAN 1 of 2022 is an application for expunging the name of the respondent no. 11 and impleading the heirs and legal representatives of the said deceased respondent in the array of respondents in the writ petition.

The heirs and the legal representatives of the deceased respondent no. 11 be incorporated in the cause title of the writ petition as the respondent nos. 11(a), 11(b) and 11(c).

It is revealed that when the writ petition was filed the respondent no. 11 had already expired. On coming to know of such death, when the postal articles returned, such application has been filed.

Office is directed to incorporate the names of the said heirs of the deceased respondent no. 11 and expunge the name of the respondent no. 11 from the writ petition. Mr. D. Aditya, learned advocate appears on behalf of the heirs of the deceased respondent no. 11 who have been impleaded in the proceedings.

Accordingly CAN 1 of 2022 is allowed.

The reports filed by the police authorities and the Block Land & Land Reforms Officer in the writ petition, are taken on record.

From the report of the Block Land & Land Reforms Officer, Serampore- Uttarpara, Hooghly, filed in court today, it appears that the construction which is on L.R. Dag No. 10447 of Mouza – Rishra, J.L. No. 27, has been raised on a 'Bastu' land. The land has been classified as a 'Bastu' in the L.R. records. Such report was prepared by the Block Land & Land Reforms Officer in the presence of the parties and all the parties were heard at the time of preparation of the report.

The police authorities have also filed a report, from which it appears that the construction is not on a pond.

The first allegation of the petitioner with regard to the construction being on a pond is not accepted by the court in view of the documents which have been filed. The writ court need not go beyond the land records.

The next allegation is that the construction has been made in violation of the rules, specially Rule 50 of the West Bengal Municipal Building Rules, 2007, and in deviation of the sanction plan.

Learned advocates for the respondent nos. 11 to 15 and the Rishra Municipality (hereinafter referred to as 'the municipality'), submit that a sanction had been granted to the respondents.

Mr. Aditya, learned advocate submits that neither has there been any violation of the rules nor has there been any deviation from the plan, which had been sanctioned by the municipality, in accordance with law.

Reliance placed on the answer to the petitioner under the Right to Information Act, indicating that the complaint of the petitioner is mala fide, need not be given any weightage as such information cannot be construed as a decision of the municipality with regard to the complaint of the petitioner.

As the petitioner has complained of certain illegalities in the construction. The competent authority of the municipality shall dispose of such

allegations in accordance with law. The enquiry shall be limited to whether there has been any construction in the absence of a plan or in deviation of the plan and the rules. While doing so, the municipality shall adopt the following procedure:

- a) An inspection of the site shall be conducted. Such inspection shall be held in the presence of the interested parties, with 48 hours advance notice to the petitioner and the respondent nos. 11(a), 11(b) and 11(c) and 12 to 15.
- b) The report of the inspection shall be prepared along with the sketch map, indicating the extent of deviation, if any.
- c) Such report shall be handed over to the petitioner as also the respondent nos. 11(a), 11(b) and 11(c), 12 to 15.
- d) A hearing shall be given to the petitioner and the respondent nos. 11(a), 11(b) and 11(c) and 12 to 15. 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 counter-claims of the parties and the issues shall be decided independently.

The question of title, possession and boundary dispute etc. shall not be decided by the municipal authorities. The only question to be decided by the municipal authorities would be whether the construction has been made without any permission and/or in violation of the building rules.

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

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.)