

S/L 18
02.03.2022
Court. No. 19
GB

W.P.A. 19283 of 2021

Swapan Kumar Guha
VS
The State of West Bengal & Ors.

Mr. Dibyendu Chatterjee.

...for the Petitioner.

*Mr. Mrinal Kanti Das,
Mr. Subhabrata Das,
Mr. Kartick Kumar Goyal.*

...for the Respondent Nos.3 & 4.

*Mr. Debraj Bhattacharya,
Mr. Debasish Kar.*

...for the Respondent No.6.

The petitioner is a resident of a building situated at 19, Ghospara Road, Kalitala, Post Office -Ichapur Nababganj, being Municipal Holding No.23 under Ward No.03 of the North Barrackpore Municipality.

The allegation is that some unauthorized constructions had been erected on the roof of the said building by the respondent no.6. Respondent No.6 is a co-owner of the said building. Proceedings had been initiated on the basis of a complaint lodged by the petitioner. The petitioner had earlier filed a writ petition alleging inaction on the part of the Municipality against such unauthorized construction.

This Court had directed the Municipality to act and proceed in accordance with law. Thereafter, the Chairperson, Board of Administration, North Barrackpore Municipality proceeded under the law and passed an order of demolition

dated October 4, 2021. The nature and extent of the unauthorized construction has been mentioned in the order. The authority directed that two rooms and a toilet on the 2nd floor and a door installed in the common stair on the 1st floor, must be demolished.

It is an admitted position that the respondent no.6 has not challenged the said demolition order. The contention of the respondent no.6 that the writ petitioner does not have any locus to file this application is not accepted by this Court in view of the fact that the writ petitioner and the respondent no.6 are joint owners of the property in question and the said unauthorized construction, as detected by the municipality, has been erected in the same house and in the areas jointly owned and possessed by the parties. The other contention of the respondent no.6 that the dispute between the co-sharers cannot be adjudicated by a writ court, is also not accepted. The allegations are against the municipality which has failed to implement the demolition order.

Mr. Das, learned advocate appearing on behalf of the Municipality submits that the Municipality shall act and proceed in accordance with law.

Admittedly, the petitioner resides in the same building and as such, the petitioner has the locus to complain of unauthorized constructions, which have been made in the same building. A resident of the building does have the right to bring it to the notice of the municipality about the illegality in any constructions made in the said building. Moreover, the Municipality under the law is duty bound to

ensure that unauthorized constructions do not take place. Thus, the locus of the petitioner is not in doubt. The respondent no.6 has not challenged the order of demolition. Nothing further remains to be decided in the writ petition. The dispute is not private in nature. Insofar as, the complaint against the Municipality for not implementing the order of demolition is concerned, the writ petition is disposed of.

The Municipality shall act and proceed in accordance with law and expeditiously, unless the order of demolition is stayed or set aside by a superior forum.

The entire exercise shall be completed within a period of three months from date of communication of this order upon issuance of notice to all the parties.

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.)