

S/L 22
17.05.2022
Court. No. 19
GB

WPA 19548 of 2021

Smt. Jaya Das
VS
New Barrackpore Municipality & Ors.

*Mr. Sailesh Gupta,
Ms. Manika Sarkar.*

...for the Petitioner.

*Ms. Sutapa Sanyal,
Ms. Susnita Saha.*

...for the State.

Mr. Udayan Dutta.

...for the Municipality.

Leave is granted to the petitioner to correct the description of the respondent no.6.

The municipality has issued a stop work notice upon the petitioner dated November 30, 2021 asking the petitioner to stop all masonry works at holding no.368/42 within ward no.6 of the New Barrackpore municipality.

The petitioner has challenged the aforementioned stop work notice on the following grounds:-

- a) No construction was going on.
- b) Some temporary repairing of the existing 'kuchcha' structure was being done, for which permission was not required.
- c) The boundary wall was repairing in order to secure the children, who studied in the kindergarten school, which was being run from the said premises.

Mr. Dutta, learned advocate appearing on behalf of the New Barrackpore municipality submits that in the records of the municipality, the concerned plot over which such construction was detected, has been recorded as a 'pond'. He further submits that the record of rights revealed that the land was recorded in the name of the land department. Subsequently, the New Barrackpore Co-operative Homes Limited, a housing society conveyed a portion of the said plot to the petitioner for construction of a house. Such transfer does not seem to be legitimate.

The recitals in the deed of conveyance indicate that the Governor of West Bengal transferred certain plots, which were earlier recorded in the name of the land department, by an indenture dated February 1, 1996 to a society. The land had been acquired by the Government of West Bengal for settlement of immigrants. The petitioner was conveyed the land by an indenture dated April 16, 2018 by the said society. The petitioner applied for mutation. The New Barrackpore municipality granted the mutation in respect of the holding no.368/42, but recorded the land as a 'pond' in the mutation certificate. That the record of rights indicate that plot no.277 of which holding no.368/42 is a part was recorded as a 'danga'.

The petitioner has alleged that direction to stop work was illegal and could not survive. The impugned notice dated November 30, 2021 must be quashed.

The learned advocate for the State respondents files a report prepared by the Block Land and Land Reforms Officer along with an authenticated copy of the record of rights and

it appears that the plot no.277 pertaining to Khatian no.2010 has been recorded in favour of the land department to an extent of 28 decimals and in the name of Shyamal Das to the extent of 0.05 decimals. The Block Land and Land Reforms Officer has categorically stated that a further report after verification of the record of rights and upon conducting a field enquiry may be prepared for adjudication of the dispute.

Instead of keeping the writ petition pending, this Court is of the view that the writ petition must be disposed of with a direction upon the municipal authorities to treat the writ petition as a representation and dispose of the same in accordance with law upon hearing the petitioner, a competent officer of the Block Land and Land Reforms Office, officials from other department as also the co-operative society. Before such hearing, a joint inspection shall be held by the authorised representative of the municipality in the presence of the petitioner, the Block Land and Land Reforms Officer the Co-operative Society. Such inspection, measurement etc. shall be made with the help of an 'Amin'. The records available in the office of the Block Land and Land Reforms Officer as also the municipality, shall be compared and considered.

A report of such inspection shall be prepared and supplied to the respective parties, who shall be at liberty to file their written version to the said report. Thereafter, a hearing shall be granted. A reasoned order shall be passed and communicated to all concerned.

It is made clear that if it appears from the nature of user, the inspection and the records available in the office of the Block Land and Land Reforms Officer that the land had always been a 'danga' and not a 'pond', in that case, the municipality shall rectify its records accordingly. Thereafter, the petitioner will be at liberty to pray for a sanction in accordance with law. However, as there is no sanction as of now, no construction shall be made.

This Court has not gone into the merits and the authority shall decide the issues in a free and fair manner.

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

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

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

(Shampa Sarkar, J.)