

19.07.2022
Item No.78
Ct. No.24
CHC
(disposed of)

W.P.A.17808 of 2019

Paritosh Nandi

Vs.

The State of West Bengal & ors.

Mr. Jagabandhu Roy,
Mr. Himadri Kumar Mahata,
Mr. Ziaul Haque
...for the petitioner

Mr. Masud Mallik,
Ms. Oly Maity
...for the respondent nos.3 & 4

The affidavit-of-service filed in Court is taken on record.

The petitioner alleges illegal and unauthorised construction at the instance of the private respondents.

On an application made by the petitioner under the Right to Information Act, the Egra Municipality intimated the petitioner that the house building plan of Smt. Indrani Ghoshal has not been signed by the concerned Sub-Assistant Engineer and the Chairman of the Municipality.

The petitioner has further been intimated that there is slight violation of the norms of the building Rules and the Act at the time of making the

construction. The plan was approved in the Board of Councillors meeting on 29th January, 2019, but the same has not been signed by the Sub-Assistant Engineer concerned and the Chairman of the Municipality and the same has not been delivered to the incumbent.

In view of the above illegalities the Municipality has suspended allotment of Government fund under P.M.A.Y, HFA (Urban) Scheme in favour of the incumbent Smt. Indrani Ghoshal.

The petitioner prays for a direction upon the Municipal Authorities to take steps against the illegal construction that has been made by encroaching the land of the petitioner.

Learned advocate representing the private respondents submits that the petitioner filed an earlier writ petition with similar allegation being W.P. No.3422 (W) of 2019. The said writ petition was dismissed on 21st February, 2019. The Court was of the opinion that the dispute pertains to encroachment of an immovable property. It involves disputed question of facts and such dispute cannot be made the subject matter of an application under Article 226 of the Constitution of India.

Prayer has been made for dismissal of the present writ petition on the ground of *res judicata*.

I have perused the documents filed before this Court and the order passed by this Court on 21st February, 2019.

In the present writ petition, it appears that there is a specific finding of the Egra Municipality with regard to the violation of the Rules at the time of making construction.

It will be open for the Egra Municipality to take appropriate steps for dealing with such violation committed by the private respondents at the time of making construction.

The Municipality is however restrained from entering into any private dispute in between the parties regarding encroachment.

As regards encroachment, the parties may be at liberty to approach the appropriate forum in accordance with law.

The writ petition stands disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties on completion of usual formalities.

(Amrita Sinha, J.)