

22.02.2022
Court No. 19
Item no.14
CP

WPA 21002 of 2021

Snehashish Mondal
Vs.
Bidhannagar Municipal Corporation & Ors.

Mr. Mayukh Maitra
Mr. Rajesh Naskar

..for the petitioner.

Mr. Debabrata Saha Roy
Mr. Arka K. Nag
Mr. S. Das

....for the respondent nos. 1, 2 & 3.

Mr. Debabrata Ray
Mr. Sounik Mondal

....for the respondent nos. 5 & 6.

The petitioner alleges that the Bidhannagar Municipal Corporation (hereinafter referred to as 'the corporation'), has failed and neglected to take steps against the unauthorized construction made by the respondent nos. 5 and 6. According to the petitioner, the respondent nos. 5 and 6 had admittedly made some constructions without a valid sanction which transpired from a report filed by the corporation before a learned Judge of this court. The order dated September 26, 2018 has been annexed to the writ petition from which it appears that the court had directed the corporation to conclude the proceedings in accordance with law within 12 weeks. It was also recorded that the respondents responsible for such

construction shall be at liberty to produce the sanctioned building plan and to establish that the construction was authorized. A hearing was directed to be given to the parties.

It is alleged that such proceedings, despite orders of this court was initiated but not concluded. It is further submitted by the petitioner that respondent nos. 5 and 6 have continued with the unauthorized construction.

Mr. Ray, learned advocate appearing on behalf of the respondent nos. 5 and 6, has produced a sanctioned building plan granted by the appropriate authority of the corporation, dated January 22, 2020. Mr. Ray submits that the unauthorized structures which were detected during the earlier round of inspection were demolished by the said respondents and a new construction has just started. The notice of commencement of work dated February 11, 2022 has been filed in court along with the sanction plan. Both the documents are taken on record.

Mr. Saha Roy, learned advocate appearing on behalf of the corporation, submits that the earlier construction was demolished and the sanction plan was granted on the satisfaction of the authority that there was no construction on the land in question.

However, he also submits that a physical inspection was made and the parties were called for a hearing.

Mr. Maitra, learned advocate appearing on behalf of the petitioner, denies such contention and submits that neither any notice had been received by his client nor was his client present at the inspection.

Having considered the rival contentions of the parties, this court is of the opinion that as there are allegations of unauthorized construction on premises no. TM-2/7, Tegharia, Mandal Para, P.S. – Baguihati, District – North 24 Parganas, the competent authority of the corporation must deal with the issues in accordance with law by adhering to the following procedures:

- a) An inspection of the site shall be conducted. Such inspection shall be held in the presence of the parties, with 48 hours advance notice to the petitioner and the respondent nos. 5 and 6.
- 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. 5 and 6.

- d) A hearing shall be given to the petitioner and the respondent nos. 5 and 6. 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. In the reasoned order, the corporation will clearly state why the sanction was granted subsequently when the corporation had itself found some existing unauthorized construction. It has to be explained in detail by the corporation as to how, when and in what manner the earlier unauthorized construction was demolished as claimed by the said respondents.
- f) If on inspection, the corporation finds that the unauthorised construction is continuing, then interim measures shall be taken in accordance with law.

The court has not gone into the merit of the claims and counter-claims of the parties and the issues shall be decided independently.

The question of title, possession and encroachment etc. shall not be decided by the corporation. The enquiry of the corporation shall be restricted to detection of unauthorized construction and the consequences that should follow upon detection of such unauthorized construction.

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.)