

22.3. 2022
Court No. 19
Item no.9
sn

W.P.A.21036 of 2021

Tapan Samadder
Vs.
The Baranagar Municipality & Ors.

Mr. Susenjit Banikfor the petitioner

Ms. Sudipa Roy
Mr. Srinath Singha ..for the State

Mr. Anjan Roy
Mr. Lutful Haque ..for the respondents 6&7

Despite service, none appears on behalf of the Baranagar municipality. Affidavit of service is taken on record. The notice of mentioning has also been served upon the municipality, receipt thereof, is also taken on record.

The petitioner is aggrieved by the inaction on the part of the Baranagar municipality in disposing of the applications filed repeatedly by the petitioner alleging unauthorised constructions on the roof and stair case of the premises no. 10/1/1, Sitala Mata Lane, Police Station Baranagar, District North 24 Parganas, Kolkata 700 090.

It is the contention of the petitioner that such complaint was lodged before the municipality on the basis of the order passed by the Court in W.P.26147(W) of 2016. The order of the Court dated August 3, 2018 reads as follows:-

“ Apparently, a portion of the grievance of the petitioner stands redressed by the demolition of such portion of the unauthorised construction as found by the municipality and resolved by the Board of Councillors on July 3, 2018. That apart, the petitioner has a grievance with regard to the structure standing on the roof. The petitioner has made a complaint with regard thereto on July 4, 2018.

In such circumstances, the issue of such unauthorised construction is left open to be decided in appropriate proceedings. The private parties are at liberty to take steps with regard to such complain, in accordance with law.”

Mr. Haque, learned advocate for the respondent nos. 6&7 submits that the unauthorised portion was already demolished by the municipality. That the petitioner is setting up an alternative title to the roof and staircase, which the petitioner had sold earlier to the vendor of the respondent nos. 6&7.

Reliance has been placed on the sale deed. It is further submitted that the damaged of roof could not be utilised by the respondent nos. 6&7, and as such minor repairs have been made. The allegations are denied and it is submitted that the municipality may not be directed to proceed with the complaint lodged by the petitioner. It has been further submitted that both the parties have filed civil suits against each other and an ad-interim order of injunction had been granted restraining the petitioner from interfering with the repair works.

The Civil Court is not the authority to decide whether there has been any unauthorised

construction or not. The municipality is vested with the exclusive power to decide the issues relating to unauthorised construction and proceed against such construction in accordance with provisions of Section 218 of the West Bengal Municipal Act, 1993.

Neither this Court nor the municipality has the jurisdiction to decide the issue with regard to the title. Whether roof right and right of the staircase has vested on the respondent nos. 6&7 is a matter for adjudication in the civil suits pending.

While disposing of the issue of unauthorized construction, the competent authority of the Baranagar municipality shall adhere to the following procedure:-

a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent nos.6&7 within three weeks. Advance notice of the inspection shall be served upon the petitioner and the respondent nos.6&7 and all other interested parties. If the parties are not available to accept notice, the authorities shall affix the notice of hearing and inspection at conspicuous places in their respective premises.

b) In case, it is found on preliminary inspection that there may be reasons to believe that the construction was without permission

and was continuing, the authorities may take such interim measures by stopping such construction.

c) The report of such inspection shall be prepared along with the sketch map, indicating the extent and nature of unauthorized construction, if any.

d) Such report shall be handed over to the parties.

e) A hearing shall be given to the petitioner and the respondent nos.6&7. 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. All points raised by either party, will be decided.

f) 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 the issues involved shall be decided independently.

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

Accordingly, the writ petition is disposed of.

There will be, however, no order as to costs.

All parties are directed to act on the basis of server copy of this order and/or the learned advocate's communication.

(Shampa Sarkar, J.)