

09.03.2022
Sl. No.17
srm

W.P.A. No. 21244 of 2021

Samar Dey

Versus

The State of West Bengal & Ors.

Mr. Pritam Chuudhury,

Mr. Abhisek Addhya,

...for the Petitioner.

Mr. Ziaul Islam,

Mr. Bibekananda Tripathy

...for the State-respondents.

Mr. Atarup Banerjee,

Mr. Debashis Sarkar,

Mr. Aranya Saha

...for the Respondent nos.8 & 9.

Affidavit of service is taken on record.

The petitioner is the owner and occupier of a building situated at Plot No.564, J.L No.2 within Mouza-Garifa, Police Station-Naihati, District-24-Parganas (North). The respondent Nos.8 and 9 are the neighbours. On an allegation made by the respondent No.9 with regard to some unauthorised constructions raised by the petitioner, a complaint was filed before the Naihati Municipality. As the municipality failed and neglected to take steps in accordance with law, the respondent No.9 moved a writ petition being WPA No.7857 of 2021. The said writ petition came up for hearing before this Court on August 16, 2021. The writ petition was

disposed of with a direction upon the competent authority of the Naihati Municipality to look into the grievances of the respondent No.9 and to act and proceed in accordance with law, upon granting an opportunity of hearing to all the parties including the petitioner, herein. It was directed that an inspection shall be held in the presence of the petitioner as also the respondent Nos.8 and 9.

It is submitted by the petitioner that an inspection was held and the parties were called for a hearing. The grievance of the petitioner is, although this Court had directed that the contentions of the petitioner, who was the respondent No.6 in the earlier proceedings, should be taken into account by the competent authority of the municipality at the hearing, the complaint lodged by the petitioner on March 15, 2021 alleging unauthorised construction by the respondent Nos. 8 and 9 which is annexure P/1 at page 16 of the writ petition, was not taken into consideration.

Admittedly, the petitioner was not present before the Court when the earlier writ petition was disposed of. The fact that the petitioner had also lodged a complaint could not be brought on record.

Having heard the learned Advocates for the respective parties, this Court is of the opinion that for the ends of justice, the hearing which has commenced pursuant to the

order dated August 16, 2021, should be kept in abeyance. The inspection report and other records filed in connection with such proceedings shall be retained with the records. On the basis of the complaint raised by the petitioner, a further inspection of the construction of the respondent Nos.8 and 9 on Holding No.63/3, Balivasa Road shall be made. Such inspection shall be held in the presence of the parties. A report shall be prepared along with the sketch map, if any deviation and/or irregularity is detected. The reports shall be supplied to the parties. The parties shall be allowed an opportunity to deal with the said report and thereafter both the proceedings, initiated by the parties herein against each other with regard to their respective constructions, shall be disposed of simultaneously upon granting adequate opportunity to the parties to file their written versions and to adduce oral and documentary evidence, in support of their contentions. Both the demolition cases shall be heard analogously and the proceedings shall be separately recorded.

Reasoned orders shall be passed in respect of both the complaints and communicated to all concerned.

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

This Court has not gone into the merits of the claims and counterclaims of the parties and all points are left open for a decision by the municipality.

As no affidavit has been called for, all the allegations are deemed to be denied.

This writ petition is, thus, disposed of.

There will be no order as to costs.

All parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)