

Item No. 1

13.09.2022
Ct-24

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 20722 of 2022

Gopal Maiti & Anr.

v.

The State of West Bengal & Ors.

Mr. Debashis Banerjee
Mr. Supreem Naskar
Mr. Suddha Satva Patra
Mr. Subrata Saha
... for the petitioners.

Mr. Jahar Lal De
Mr. Supratim Dhar
... for the State.

Mr. B.K. Samanta
... for the respondent no. 7.

The petitioners are aggrieved by the order of demolition that has been passed by the Sub-Divisional Officer, Tamluk, Purba Medinipur on August 3, 2022.

In furtherance to the order of demolition, the Secretary, Purba Medinipur Zilla Parishad issued notice for demarcation of the unauthorized portion on September 1, 2022. Thereafter, notice was issued on September 6, 2022 directing the petitioners to demolish the unauthorized portion of the building in compliance of the order passed by the Sub-Divisional Officer, Tamluk, Purba Medinipur by September 13, 2022, failing which, Purba Medinipur Zilla Parishad will

demolish such unauthorized demarcated portion and recover costs under the Public Demand Recovery Act.

In accordance with the notice of demarcation, an inspection of the property was conducted on September 6, 2022. The representative of the petitioners was present at the time of inspection. Demarcation of the unauthorized construction was duly made and a copy of the sketch map was also handed over to the representative of the petitioners on September 6, 2022.

The petitioners submit that though the notice of demarcation was issued upon the petitioners but the order of demolition passed by the Sub-Divisional Officer, Tamluk, Purba Medinipur on August 3, 2022 was not served. A copy of the order of demolition has been handed over to the Court as well as to the learned advocate appearing on behalf of the petitioners by the learned advocate representing the Purba Medinipur Zilla Parishad.

The very last line of the order dated 3rd August, 2022 records about service of the copy of the order upon all concerned.

Learned advocate for the petitioners stresses upon the fact that despite a direction being there for service of a copy of the order, the same has not been served.

Learned advocate representing the private respondent submits that copy of the order was obtained

by making formal application in the office of the Sub-Divisional Officer, Tamluk, Purba Medinipur.

As of now, there nothing on record to show that the order of demolition dated August 3, 2022 was at all served upon the petitioner.

The learned advocate representing the private respondent has handed over the hearing notice dated July 11, 2022 and the copy of the joint enquiry report which was conducted in the presence of all the parties. It appears therefrom that the petitioners were also present at the time of inspection. Even at the time of demarcation of the unauthorized construction, the representative of the petitioners was present.

The petitioners are yet to substantiate that the construction alleged of was made after obtaining a proper sanctioned plan.

In view of the fact that the order of demolition dated August 3, 2022 was not served upon the petitioners, taking any further action on the basis of the said order of demolition will amount to violation of the principles of natural justice. An opportunity ought to be given to the petitioners to defend their stand *qua* the order of demolition passed on August 3, 2022.

The same has been handed over to the learned advocate for the petitioners in Court today.

Accordingly, Purba Medinipur Zilla Parishad is restrained from taking any further steps to the order of demolition dated 3rd August, 2022 till September 26, 2022.

In the event, the petitioners are not able to obtain any order to set aside/stay/modification/variation of the order impugned, then it will be open for the Purba Medinipur Zilla Parishad to proceed in accordance with law to implement the said order of demolition.

The writ petition stands disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties after completion of all legal formalities.

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(Amrita Sinha, J.)