

WP No. 19188 (W) of 2019
Sitaram Shaw
Vs.
State of West Bengal & Ors.

Mr. Kushal Chatterjee
Mr. Debabrata Roy
... for the petitioner

Mr. Tapas Kumar Adhikari
... for the State
Mr. Swapan Kumar Mallick
Ms. Sudeshna Das
...for the respondent no. 6

Despite service, none appears for the Titagarh Municipality.

The petitioner has alleged unauthorized construction by the respondent no. 6. The plot on which the alleged unauthorized construction is going on is holding no. 88, 74 R P Gupta Path, Ward No. 18, Titagarh, North 24 Parganas – 700 119.

According to the petitioner, the respondent no. 6 has made some constructions without leaving the statutory spaces as required by the West Bengal Municipal Building Rules, 2007. The petitioner lodged a complaint before the municipality. It is urged that the municipality has not taken any steps in this regard. The respondent no. 6 has handed over certain documents, which are taken on record. It appears from the said documents that the respondent no. 6 and her son are constructing the said dwelling house under the Pradhan Mantri Awas Yojana (PMAY) Scheme for the year 2017-18. Two instalments have already been released in their favour by the municipality. The entire construction was being monitored by the municipality as per the drawing/plan approved by the municipality in terms of the Scheme.

It is alleged that after the writ petition had been filed, the Chairman of the Titagarh municipality issued a stop work notice, stopping all construction till disposal of the writ petition.

It is submitted by the respondent no. 6 that the municipality, on the one hand permitted the construction on the basis of the drawing and released the funds, but on the other hand, stopped the construction without ascertaining the correctness of the allegations made by the complainant. It is further submitted that under the PMAY Scheme, the construction is made as per the drawing and the building rules were not applicable.

Having heard the rival contentions of the parties, this Court is of the opinion that the competent authority of the Titagarh Municipality, must dispose of the complaint of the writ petitioner in accordance with law, upon granting an opportunity of hearing to all the parties to present their respective cases. The entire issue shall be decided in accordance with law and as per the following procedure:-

a) An inspection of the premises shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent no.6, within three weeks. Advance notice of the inspection shall be served upon the petitioner and the respondent no.6. If the parties are not available to accept notice, the authorities shall affix the notices of hearing and inspection at conspicuous places in their respective premises.

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

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

d) A hearing shall be given to the petitioner and the respondent no.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. All points raised by either party, shall be decided.

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.

The respondent no. 6 shall be entitled to continue the construction under the supervision of the municipality under the PMAY Scheme, strictly in accordance with the drawing and the approved plan

Needless to mention, that the municipality shall take into account the contention of the respondent no. 6 that construction was being done under the PMAY Scheme and upon the approval of the drawing provided by the municipality. The allegation of unauthorized construction shall be decided upon considering whether the drawing approved by the municipality was being followed or not.

The court has not gone into the merits of the claims and counter-claims of the parties 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.

However, there will be no order as to costs.

All the parties are directed to act on the basis of the learned advocate's communication.

(Shampa Sarkar, J.)