

S/L 6
21.03.2022
Court. No. 19
GB

W.P.A. 22623 of 2017

Birendra Prasad Chowdhury
VS
Rampurhat Municipality & Ors.

*Mr. Sardar Amjad Ali,
Mr. Masum Ali Sardar.*

...for the Petitioner.

Mr. Amal Kumar Banerjee.

...for the Municipality.

Mr. Kishore Mukherjee.

...for the Respondent No.5.

The petitioner has alleged that the respondent no.5 has made some unauthorized construction on Hal Dag No.2267 pertaining to Khatian No.16746, J.L. No.77 of Mouza-Rampurhat under the Rampurhat Municipality.

The allegation is that such construction has been made over an adjacent plot to the plot of the petitioner and such construction has also encroached upon the land of the petitioner.

Mr. Ali, learned senior advocate appearing on behalf of the petitioner submits that on account of such encroachment, the mandatory side open spaces as required to be kept by the Building Rules, have not been maintained. As a result of which, the petitioner is being deprived of the passage of light and air.

Mr. Mukherjee, learned advocate appearing on behalf of the respondent no.5 hands over a copy of the plan, which was sanctioned by the Rampurhat municipality in 2016. The said plan was valid up to November 2019. It appears that a

sanction of a two storeyed building had been granted for commercial use. A copy of the plan is kept on record.

Mr. Banerjee, learned advocate appearing on behalf of the municipality also submits on instruction that a plan had been sanctioned in favour of the respondent no.5.

The controversy with regard to the title and encroachment is already sub judice before the learned civil court and the petitioner as the plaintiff has been favoured with an order of injunction. However, the order of injunction passed by the learned civil court does not have any bearing with regard to the allegation, that the construction was without a plan. The municipality and also by the respondent no.5 have denied such allegation.

This Court cannot go into the disputed questions of facts. Whether there has been any violation of the Building Rules or the mandatory side spaces have not been left open as per the Rules are matters to be decided by the municipality, in accordance with law.

Under such circumstances, the writ petition is disposed of with a liberty to the petitioner to raise further complaint in future if the construction is made in violation of the Rules or in violation of the plan. The question of title, encroachment, etc., shall be decided by the civil court. The civil court shall not be influenced by this order. If the municipality receives any complaint, in future, from the petitioner, then the same shall be disposed of by a competent authority of the municipality, in accordance with law, upon granting an opportunity of hearing to the petitioner as also

the respondent no.5. All parties shall be entitled to file their written versions and adduce oral and documentary evidences in respect of their respective claims. All such documents which shall be relied upon by either party shall be exchanged. A reasoned order shall be passed and communicated to the parties by the competent authority.

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.)