

S/L 30
26.09.2022
Court. No. 19
GB

W.P.A. 22048 of 2022

Tamonash Das
VS
The Howrah Zilla Parishad & Ors.

Mr. Soumen Bhattacharjee.

...for the Petitioner.

*Ms. Monjuli Chowdhury,
Ms. Mekhla Sinha.*

...for the Respondent Nos.1 to 3.

*Ms. Rajashree Venker Kundania,
Mr. Gaurav Mathur.*

...for the Respondent No.6.

Affidavit-of-service filed in Court today, be kept with the record.

The petitioner has alleged that Jai Mata Di Commercial Private Limited, that is the respondent no.6 has constructed a factory on L.R. Plot No.3642 of Mouza-Suvararah. The petitioner claims title to the said property.

The learned advocate for the respondent no.6 has a rival claim and submits that the property was purchased by the said respondent, much before the petitioner had come into the picture.

The rival claim to title, cannot be decided by the writ Court nor can the writ Court direct the permission granting authority to decide such issue.

The other contention of the petitioner is that a factory has been constructed without permission. Contrary to such contention, the learned advocate for the respondent no.6 submits that a boundary wall has been constructed to prevent encroachment. No further construction has been made.

The allegation of unauthorized construction of a factory, if at all, has to be decided by the appropriate permission granting authority. It appears that the petitioner had approached the District Engineer, Howrah Zilla Parishad by filing a representation dated July 4, 2022 alleging that the construction of the factory was illegal. The reasons as to why the petitioner believed the construction to be illegal, has not been categorically stated. Vague and omnibus allegation has been made to the effect that construction was illegal. Such allegations will not suffice and shall not call for interference by the authority.

Under such circumstances, the writ petition is disposed of with a liberty to the petitioner to file a fresh representation, with specific allegations. If any representation is made, the same shall be disposed of by the concerned permission granting authority in accordance with law.

While doing so, the following procedure shall be adopted by the permission granted authority.

- a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent no.6. An advance notice of the inspection shall be served upon the petitioner and the respondent no.6 and all other interested parties. If the parties are not available to accept notice, the same shall be affixed at a conspicuous place in the 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 had been 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. The question of right, title and possession shall not be decided by the panchayat authorities.
- e) 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, 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 accordance with law.

The court has not gone into the merits of the claims of the petitioner and the issues involved shall be decided independently.

The entire exercise shall be completed within a period of four months from date of receipt of the representation of the petitioner.

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 server copy of this order.

(Shampa Sarkar, J.)