

30.03.2022
Court No. 19
Item no.10
CP

WPA 20233 of 2019

Sri Biswanath Gond
Vs.
The State of West Bengal & ors.

Mr. M. Goswami
Mr. P. Goswami

.....for the petitioner.

Mr. Ziaul Islam
Mr. Abdus Salam

....for the State.

Mr. Dibyendu Chatterjee
Mr. Pritam Majumer.

.....for the Municipality.

Mr. R. Kali

....for the respondent no. 5.

The petitioner is the adjacent plot owner who claims that some unauthorized construction has been going on at Holding No. 51 under Ward No. 17 of the Bhatpara Municipality (hereinafter referred to as 'the municipality'). It is submitted that the respondent no. 5 has raised the construction without any sanction plan and in deviation of the building rules. The mandatory side spaces as required to be maintained under the rules, have not been kept vacant.

Mr. Majumder, learned advocate appearing for the municipality, submits that a sanction had been

granted for the construction. However, he submits that prima facie some deviations have been detected.

Mr. Kali, learned advocate appearing for the respondent no. 5, denies the allegations of the municipality and also of the petitioner. He submits that the construction has been made in accordance with the plan. That the allegations of boundary dispute, encroachment etc, cannot be decided by the municipality.

However, as the municipality has already taken cognizance of the complaint of the petitioner, no useful purpose will be served by keeping the writ petition pending. The writ petition is disposed of with a direction upon the competent authority of the municipality to act and proceed in accordance with law, by adhering to the following procedure:

- a) An inspection of the site shall be conducted. Such inspection shall be held in the presence of the parties, with 48 hours advance notice to the petitioner and the respondent no. 5.
- b) The report of the inspection shall be prepared along with the sketch map indicating the extent of deviation, if any.
- c) Such report shall be handed over to the petitioner as also the respondent No. 5.

- d) A hearing shall be given to the petitioner and the respondent No. 5. 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.
- 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 court has not gone into the merit of the claims and counter-claims of the parties and the issues shall be decided independently.

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

The question of title, possession and boundary dispute etc. shall not be decided by the municipality. The only question to be decided by the municipality would be whether the construction has been made without any permission and/or in violation of the building rules.

The writ petition is, thus, disposed of. There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)