

Court No. 24

WPA 23382 of 2019

08.09.2022

(AD 132)

(S. Banerjee)

Nikhilesh Samanta & Anr.
Vs.
State of West Bengal & Ors.

with

CAN 1 of 2022

CAN 2 of 2022

Mr. Sayantan Hazra

... for the petitioner

Mr. M. Thakur

Mr. Swarup Kumar Ghosh

... for the respondent nos. 3 and 4

Mr. Snehasis Jana

... for the private respondents

The respondent no. 7 Malina Dhara has expired during pendency of the writ application. An application for substitution has been filed by the writ petitioners out of time. A further application praying for condoning the delay in filing the application for substitution has also been filed by the petitioners.

On perusal of the averments made in the said applications the Court is satisfied with the reasons mentioned therein explaining the delay in filing the application for substitution.

In view of the above, the application for substitution stands allowed. The heirs and legal

representatives of the deceased respondent no. 7 be brought on record.

Copy of the application for substitution has been served upon the heirs and legal representatives of the deceased Malina Dhara.

Learned advocate appears on behalf of the substituted respondent.

The writ petitioners complain of unauthorised and illegal construction at the instance of the erstwhile respondent no. 7.

The specific allegation of the petitioners is that the private respondents have made construction over a plot of land which is recorded as Doba in the Record of Rights maintained by the Block Land and Land Reforms Officer. The petitioners complain that the objection filed by the petitioners against such illegal and unauthorised construction has not been taken into consideration by the Ghatal Municipality.

Learned advocate representing the private respondents submits, upon instruction that, construction was made on the plot of land upon obtaining proper sanction from the municipality. It has been submitted that the construction that has been made is strictly in accordance with the plan that has been sanctioned.

Learned advocate representing the Ghatal Municipality has submitted a report before this Court wherefrom it appears that on receipt of objection from the petitioners a spot inspection was conducted upon prior notice to the parties. The parties along with their respective advocates were present. The land was physically measured.

The report mentions that the RS Plot No. 180/2066 is classified as Doba. But at present there is a Moram Pathway on the extreme eastern side of the said plot. There is a strip of land on the north-east side of the plot which is covered by the existing municipal concrete road.

Malina Dhara, one of the co-sharers of the said plot, constructed a structure of corrugated sheet on precasted RCC pillar of an area of 180 square feet (9 feet X 20 feet). The water-body in a portion of the said land, classified as Doba, is not used and absolutely polluted.

Upon hearing the submissions made on behalf of the parties and upon perusal of the report that has been filed by the municipality, it appears that a construction does exist in the said plot of land. The report does not mention as to whether the said construction was made

on the basis of a plan sanctioned by the municipality or not.

Learned advocate for the private-respondents has produced the copy of the sanctioned plan.

In view of the above, the instant writ petition is disposed of by directing the competent authority of the Ghatal Municipality to afford an opportunity of hearing to both the parties and upon perusal of the documents placed by the parties at the time of hearing, the competent authority shall take a decision as to whether the construction complained of is an unauthorised and illegal one which is required to be removed or not.

The municipality shall conduct the hearing upon prior notice to the parties within a period of three weeks and take a decision in the matter within a period of four weeks thereafter. A reasoned order shall be passed and communicated to the parties.

In the event, the municipality is of the opinion that the construction has been made in deviation of the plan sanctioned, necessary steps shall be taken to deal with the same strictly in accordance with law.

The writ petition stands disposed of.

The connected applications, being CAN 1 of 2022 and CAN 2 of 2022 are also disposed of.

Let copy of the report handed over in Court today by the learned advocate for the municipality be handed over to the learned advocate appearing for the petitioners as well as the private respondents.

The department is directed to make necessary corrections in the cause-title of the writ petition by impleading the names of the heirs and legal representatives of the deceased respondent no. 7 as appearing in paragraph 1 of the application for substitution, being CAN 1 of 2022.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of requisite formalities.

(Amrita Sinha, J.)