

03.01.2022
Srimanta
Ct. No. – 02
Sl. No. 06

**Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction**

W.P.A. 2577 of 2021

**Ram Chandra Agarwal
-versus
The Chairperson, Board of Administrators,
Siliguri Municipal Corporation & Ors.**

Mr. Probal Kumar Mukherjee, Sr. Adv.,
Mr. Suresh Kumar Mitruka, Adv.,
Mr. Aayush Mitruka, Adv.

...For the Petitioner.

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

In spite of service the respondents, specially the respondent nos. 1 and 2 have not appeared to contest the instant application.

It is submitted by Mr. Probal Kumar Mukherjee, learned senior counsel on behalf of the petitioner that the dispute between the petitioner and the private respondents relates to massive unauthorized construction on the disputed property by the respondents deviating the sanctioned plan granted by Siliguri Municipal Corporation in favour of the private respondents.

It is further submitted by Mr. Mukherjee drawing my attention to annexure – P/2, a copy of the order

passed in WPA No. 622 of 2021 between the parties that a Coordinate Bench of this Court directed the respondent nos. 2 and 3 to consider the representation submitted by the petitioner on 27th October, 2020 and to dispose of the same recording reasons after providing sufficient opportunity of hearing to all the necessary parties of the case within one month from the date of communication of the order.

After the said order being communicated the Siliguri Municipal Corporation passed an order dated 8th April, 2021/9th June, 2021 admitting the petitioner's contention that the private respondents have indeed made certain unauthorized construction beyond the plan sanctioned by the Corporation. It is also recorded that the respondents did not file any revised plan or even did not pray for renewal of sanctioned plan since 2007-08. The respondents were directed to demolish the unauthorized structure and were also directed to submit applications for revised plan within a period of thirty days from the date of receipt of the order. The extent of deviation or unauthorized construction is found place in page 39 of the writ petition.

According to Mr. Mukherjee, the impugned order dated 8th April, 2021/9th June, 2021 was

communicated to the petitioner on 3rd September, 2021. There was inordinate delay in communicating the said order, only to give the respondents an undue advantage to turn around an unauthorized construction to an authorized one by submission of revised plan.

The learned senior counsel has also brought my attention to the extent of unauthorized construction made by the respondents delineated in page 72 of the instant writ petition. It is contended by the learned senior counsel for the petitioner that the Corporation did not consider the representation of the petitioner and the extent of unauthorized construction made in page 72 of the instant writ application.

It is submitted by Mr. Mukherjee that as an interim measure an Engineer Commissioner from the panel of this Court may be appointed to bring forth an independent picture of unauthorized construction made by the respondents.

Having heard the learned senior counsel for the petitioner and on perusal of the entire record, this Court is of the view that the dispute between the petitioner and the private respondents is with regard to unauthorized construction allegedly carried on by the respondents. It is established from the report dated 8th April, 2021 and 9th June, 2021 which was

communicated to the petitioner on 3rd September, 2021 by the Corporation that the respondents indeed made certain unauthorized constructions. From the said report it is clear that building plan was sanctioned in 2001. It was not renewed till date though a building plan remains in force for five years. Therefore, it is clear that the respondents are making construction, authorized or unauthorized, without having any building plan and, therefore, the said construction after the lapse of the building plan is *prima facie* unauthorized in its entirety.

For the reasons stated above, this Court is of the *prima facie* view that the construction carried out after 2007-08 is unauthorized because the same was constructed without having any sanctioned plan in accordance with the laws relating to Municipality.

In view of such circumstances, this Court is of the opinion that the instant writ petition can be disposed of on merit without even hearing the respondents by passing the following orders:-

The order dated 8th April, 2021/9th June, 2021 vide Memo No. 158/SMC/G dated 03.09.2021 be quashed.

A Civil Engineer, from the panel of the High Court, be appointed at the cost of the petitioner and a joint inspection by the Court appointed Engineer and

the Executive Engineer of Siliguri Municipal Corporation be made within one month from the date of this order. The Executive Engineer of Siliguri Municipal Corporation and the Engineer appointed by the Court shall inspect the property in question jointly and submit a report as to the extent of unauthorized construction taking into account the representation submitted by the petitioner (at page 72 of the instant petition).

The Siliguri Municipal Corporation shall direct the respondents to demolish such unauthorized construction as per the joint report as stated above within two months from the date of submission of the report, failing which the Corporation shall demolish such unauthorized construction.

During the period of ascertainment of unauthorized construction as per representation made by the petitioner, the respondents are injuncted from carrying on any further construction on the disputed property.

With the above direction, the instant writ petition is **disposed of**.

The Registrar, Circuit Bench at Jalpaiguri is requested to collect and report the name of enlisted Engineer maintained by the High Court at Calcutta for appointment. The remuneration of the Engineer to be

paid by the petitioner is fixed at 1,000 G.Ms. per visit to be borne by the petitioner along with the travelling expenses if the enlisted Engineer resides outside the jurisdiction of the Siliguri township.

(Bibek Chaudhuri, J.)