

04
03.04.2023
d.p.

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A 5619 of 2023

**Hira Banerjee & Anr.
-versus
The State of West Bengal & Ors.**

**Mr. Samiran Mandal,
Mr. Abhinaba Dan.
...For the Petitioners.**

**Mr. Achintya Banerjee,
Ms. Indumouli Banerjee.
...For the Municipality.**

**Mr. Narayan Ch. Bhattacharyya,
Ms. Sujata Ghosh.
...For the State.**

**Mr. Tapan Coomar Dey,
Ms. Shreya Chatterjee.
...For the Respondent
Nos.5 to 9.**

Affidavit-of-service filed in Court today is taken on record.

The present writ petition is a sequel to the earlier writ petition filed by the private respondents being WPA 3736 of 2022.

In the earlier writ petition the private respondents herein alleged unauthorized construction at the instance of the present writ petitioners. In the present writ petition, the allegation is vice versa.

From the documents annexed to the writ petition, it appears that the Executive Engineer of Bishnupur Municipality conducted a spot inspection on 22nd February, 2023.

The parties were directed to remain present at the spot with all valid documents and with one Amin each for proper ascertaining the possession of the plot in question.

It appears from the submissions made on behalf of both the parties that a civil suit is pending consideration between the parties before the appropriate forum.

The Court in the earlier writ petition specifically restrained the municipal authority from entering into or deciding any private dispute of the parties regarding right, title and interest in respect of the subject plot of land.

The grievance of the petitioners is that as the proceeding was initiated by the Municipality in compliance of the direction passed by the Court in the earlier writ petition filed by the private respondents, accordingly, the Municipality is not paying heed to the submissions made on behalf of the petitioners herein.

The petitioners assert that the private respondents are also guilty of raising unauthorized construction over their wall. By this manner, the mandatory side open spaces required to be left open have been infringed.

The objection filed by the petitioners before the Municipality is pending consideration.

Learned advocate appearing for the private respondents submits, upon instructions, that the construction has been raised in accordance with two plans sanctioned by the Municipality. At present, no construction is being made by the private respondents as alleged or at all.

It has been submitted that the construction has been made strictly in accordance with the plan sanctioned by the Municipality long back.

It has been alleged that the present writ petition has been filed as a counter blast to the earlier writ petition filed by the private respondents.

It appears that the Municipality has already taken steps in compliance of the direction passed in the earlier writ petition.

It has been submitted by the learned advocate appearing for the Municipality that a further spot inspection shall be conducted to ascertain the actual possession of the parties.

It is hereby directed that the Municipality shall take into consideration the complaint and counter compliant lodged by the parties.

The deployment of the Amin may be restricted only with regard to the identification of the plot but the Amin will not be required to ascertain as to whether there has been any encroachment of the land by either of the parties. The Amin will only identify the land in question so that the Municipality can ascertain as to whether the mandatory side open spaces have been maintained or not.

The Municipality is once again restrained from entering into or deciding any private disputes in between the parties. The Municipality shall try to detect as to whether there has been any unauthorized construction in violation of the municipal laws.

The Municipality shall decide as to whether the construction made by both the parties is in accordance with the plan sanctioned by the Municipality or not.

In the event the Municipality is of the considered opinion that there is any construction made contrary to the municipal laws, then necessary steps shall be taken to deal with the same after affording reasonable opportunity of hearing to both the parties.

A final order shall be passed and communicated to both the parties positively within a period of twelve weeks from the date of communication of this order.

Learned advocate appearing for the petitioners is directed to forward a copy of the representation dated 20th February, 2023 to the aforesaid respondent at the time of communicating the order of the Court.

The writ petition stands disposed of.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)