

Item No.10 to12

In the High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

30.11.2023
Ct-24

WPA 16592 of 2023
Sri Srikanta Maity

v.

The State of West Bengal & Ors.

with

WPA 6534 of 2019

with

WPA 7151 of 2021

Mr. Sanjay Ghosh

... for the petitioner in
WPA 16592 of 2023.

Mr. M. Thakur

Mr. Swarup Kumar Ghosh

... for Ghatal Municipality
in all the matters.

Mr. Sarwar Jahan

Mr. Sayantan Hazra

... for the petitioners in
WPA 6534 of 2019 & private respondents in
WPA 16592 of 2023.

Sri Srikanta Maity has filed the writ petition no. 16592 of 2023 praying for implementation of the order of demolition passed by the Ghatal Municipality on June 6, 2018 communicated to the parties vide memo dated February 20, 2019.

The private respondents Smt. Nayantara, Sri Radhanath, Sri Toton and Sri Pintu oppose the writ petition.

According to Srikanta, the order of demolition ought to have been implemented long ago. There is a recording in the order passed by the Board of

Councillors of the Municipality that construction has been made beyond the sanctioned area.

Srikanta submits that construction has been made in such a manner that the mandatory side open spaces have been infringed.

Smt. Nayantara and others challenged the order of demolition in WP No. 6534 of 2019 on the ground that the same has been passed without taking into consideration the proper facts and figures. Reliance has been placed upon the record-of-rights to show that Smt. Nayantara and others are owners of 4 decimals of land and not 1.92 decimals of land as reflected in the order of demolition.

Smt. Nayantara and others admit that initially plan was obtained for raising construction over 574.52 sq. ft. in the ground floor but construction has actually been made over 1002 sq. ft. and in the first floor the approved area for construction was 641.33 sq. ft. but construction has actually been made over 1093 sq. ft.

Smt. Nayantara and others submit that an application was submitted before the Municipality for addition and extension of the existing building on September 20, 2017 but the same is pending consideration till date. The Municipality without taking into consideration the pending application filed by Smt. Nayantara and others in the year 2017 passed the order of demolition in the year 2018 and communicated the same in the year 2019.

Learned advocate representing the Municipality submits, upon instruction that, Smt. Nayantara and others are guilty of raising unauthorized construction in

excess of the area as mentioned in the sanctioned plan and, accordingly, the excess area constructed without valid sanction is liable to be demolished.

Learned advocate representing Srikanta submits that Smt. Nayantara and others are seeking to regularize the unauthorized construction by filing application. The same is impermissible.

I have heard and considered the submissions made on behalf of all the parties and perused the materials placed before this Court.

Smt. Nayantara and others have produced the record-of-rights in support of their submission that they are the owners and occupiers of 4 decimals of land.

According to Smt. Nayantara and others sanction ought to have been granted taking into consideration the entire land area. The order of demolition mentions that Smt. Nayantara and others are owners of only 1.92 decimals of land.

Smt. Nayantara and others ought to have been raised construction over the excess area only after obtaining proper sanction. They ought not to have raised construction over excess land which was not sanctioned by the Municipality.

Accordingly, prima facie, it appears that the order of demolition was rightly passed.

However, as it appears that Smt. Nayantara and others possess more land as is reflected in the record-of-rights and application is pending consideration before the Municipality seeking extension of the excess area of land over which construction has been made and as the

construction is in place for more than six years, the Municipality is directed to take into consideration the application filed by Smt. Nayantara and others and if it is permissible in law to grant sanction for the excess area over which construction has been made, then the authority shall take necessary steps in the matter.

In the event, the Municipality is of the opinion that sanction cannot be granted for the portion which was constructed in excess of the sanctioned area, then steps shall be taken for demolishing the same in accordance with law.

A decision shall be taken by the Board of Councillors, Ghatal Municipality at the earliest but positively within a period of four weeks from the date of communication of this order.

The Municipality may conduct fresh inspection upon notice to all the necessary parties to ascertain the exact quantum of land over which construction has been made.

The order passed by the Ghatal Municipality on June 16, 2018 communicated vide memo dated February 20, 2019 shall be kept in abeyance till a fresh decision is taken by the Ghatal Municipality in terms of the direction passed hereinabove.

All the three writ petitions stand disposed of.

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

Sh

(Amrita Sinha, J.)