

23.2.2023
Ct.19/sl.6
sn

W.P.A. 7570 of 2022

Sourav Kumar Boral

Vs.

The State of West Bengal & Ors.

W.P.A. 12385 of 2022

Susil Kumar Chattopadhyay

Vs.

The State of West Bengal & Ors.

Mr. Debashis Banerjee

Mr. Supreem Naskar

Mr. Rakesh Jana

...for the petitioner in
WPA 7570 of 2022 &
for the respdts.5 in
WPA12385/2022

Mr. A. Mitra

Mr. Sib Sankar Das

..for the petitioner in
WPA 12385 of 2022 &
respdt no.9 in WPA 7570/2022

Ms.. Mekhla Sinha

..for the Howrah Zilla Parishad

Mr. Malay Singh

Mr. Tapas Ballav Mondal

..for the State in WPA 7570/2022

Mr. Santanu Kr. Mitra

Mr. Mirza Kutubuddin

..for the State in WPA 12385/2022

In re: W.P.A. 7570 of 2022

Affidavit in opposition filed by the Howrah Zilla Parishad is taken on record. The Zilla Parishad has admitted that an application along with the “as made plan” with relevant documents had been filed by the respondent no.9 before the Zilla Parishad on April

21, 2021. The said document was found to be genuine. It appears that powers under Sections 48,52,53,54,55 and 125 of the West Bengal Town and Country (Planning & Development) Act, 1979 had been delegated to the Howrah Zilla Parishad, by the Kolkata Metropolitan Development Authority.

Ms. Sinha and Mr. Mitra, learned advocates appearing on behalf of the Zilla Parishad and the respondent no.9 rely on such delegation and submit that as the West Bengal Town and Country (Planning & Development) Act, 1979 makes a provision for retention of unauthorized construction under Section 53 of the said Act, the Zilla Parishad as a delegatee of the Kolkata Metropolitan Development Authority has the power to consider the “as made plan” filed by the respondent no.9. The building committee will decide whether retention of two additional floors which had been constructed without permission, could be allowed.

In this writ petition, the prayer of the writ petitioner is restricted to the implementation of the order of demolition passed against the respondent no.9 in respect of those two floors which were unauthorized, but in respect of which a prayer of retention of two floors had been filed prior to the order passed by the hearing officer.

Under such circumstances, this Court is of the view that prayer for implementation of the demolition order has to be considered in the light of the plea taken by the respondent no.9 as also the Zilla Parishad that the building committee was authorized by Bye-laws to consider the question of retention/regularization. Although, Mr. Banerjee seeks leave to amend the prayer so that the petitioner may challenge the said provision of the Bye-laws relating to regularization, this Court is of the view that a separate writ petition with appropriate pleadings and prayers must be filed for proper adjudication of the dispute.

The writ petition is disposed of without any orders.

Liberty is granted to the petitioner to file a fresh writ petition on the self-same cause of action and with further challenge to Regulation 15 of the Bye-laws of the Zilla Parishad.

This writ petition is disposed of.

There will be, however, no order as to costs.

WPA 12385 of 2022 be de-tagged from this file.

All parties are directed to act on the server copy of this order.

(Shampa Sarkar, J.)