

07.02.2023  
Sl. No.6(DL)  
srm

**W.P.A. No. 8215 of 2022  
(Assigned)**

**Priyam Banerjee & Anr.**

**Versus**

**The State of West Bengal & Ors.**

Mr. Priyam Banerjee,  
Mr. Rupam Banerjee ...Petitioners (In-person).

Mr. Ahibhusan Chakraborty,  
Ms. Rupsha Chakraborty  
...for the State-respondents.

Mr. Jayanta Narayan Chatterjee,  
Mr. Debashis Banerjee,  
Ms. Moumita Pandit,  
Mr. Supreem Naskar,  
Ms. Jayashree Patra,  
Ms. Sreeparna Ghosh  
...for the Respondent Nos.9 to 16.

Affidavit-of-service is taken on record. Despite service, none appears on behalf of the South Dum Dum Municipality.

The petitioners allege that the respondent Nos.9 to 16 have raised certain unauthorised constructions which require demolition. According to the petitioners, they had approached the Chairman, South Dum Dum Municipality as also the Board of Councillors of South Dum Dum

Municipality with a request that steps be taken in respect of such construction.

The description of the alleged unauthorized structures are as follows:

E.P. No.06 (House Non.360/6), E.P. Nno.04 (House No.360/4), E.P. No.05 (House No.360/5), E.P. Nos.19/20/21 (House Nos.360/19, 360/27A, 360/27B, 360/27C, etc.), E.P. No.12 (House Nno.360/12), E.P. No.11 (House No.360/11), E.P. No.12B (Holding Non.16), E.P. No.17 (House No.360/17) and E.P. No.02 (House No.360/2).

Allegation has been made that apart from the abovementioned structures, stalls, shops and other small structures have been raised on the footpath and in front of Lake Apartment also without any sanction and permission.

Further contention of the petitioners is that the constructions are new and recently raised. The constructions are not old or dilapidated. The permission for such constructions was mandatory as per law.

Objections dated February 3, 2022 and August 11, 2021 have been annexed to the writ petition which clearly indicate that the petitioners have approached the municipality.

Mr. Jayanta Narayan Chatterjee, learned Advocate for the respondent Nos.9 to 16 submits that the buildings

and structures which are the subject matters of dispute in this writ petition existed since 1947, when refugees had been rehabilitated in the said area and they were permitted to construct small houses. At the relevant point of time permission from the municipal authority was not mandatory. Subsequently these inhabitants applied before the South Dum Dum Municipality for sanction and permission and in some cases such permission/sanction had been given. Mr. Chatterjee also raises the question of locus of the petitioners to file this application before the High Court.

With regard to the point of locus, the law is well settled that any person has the right to seek a mandamus upon an authority to discharge the statutory functions under Sections 204 and 218 of the West Bengal Municipal Act, 1993. It is for the permission granting authority to ensure that no building within its jurisdiction is constructed without taking appropriate permission and without following the provisions of law. The petitioners had approached the authority requesting the authority to discharge such function under the West Bengal Municipal Act, 1993. The authorities failed to take into consideration the complaints lodged by the petitioners. The petitioners have the right to approach the writ Court for a mandamus

upon the authorities directing them to discharge their statutory obligations.

The petitioners also submit that they are residents of Shyama Prasad Colony and the buildings which have been constructed without any sanction also are within the same colony. Thus, the petitioners being local residents of the area have a right to approach the authority, seeking intervention in respect of those constructions which were without any authority of law, within the locality. Unauthorized constructions are a burden on the civic amenities made available by the municipality. The same obstruct the beauty and the design of a planned city. Such constructions also affect the living conditions of the persons within the locality. They are also sources of environmental hazard.

This Court is not entering into the merits of the allegation made by the petitioners. This Court disposes of the writ petition with a direction upon the Board of Councillors, South Dum Dum Municipality to treat the writ petition as the representation of the petitioners and dispose of the same, in accordance with law. While doing so, the municipal authority shall adhere to the following procedure:-

- a) Inspection of the site shall be conducted. Such inspection shall be held in the presence of the petitioners and the respondent Nos.9 to 16, with 48 hours advance notice to the petitioners and the respondent Nos.9 to 16.
- b) Report of the inspection shall be prepared along with a sketch map indicating the extent of deviation, if any.
- c) Such report shall be handed over to the petitioners as also the respondent Nos.9 to 16.
- d) In case, it is found on preliminary inspection that there may be reasons to believe that the constructions were without permission and had been continuing, the authorities may take interim measures by stopping such construction.
- e) A hearing shall be given to all the parties. The parties must also be allowed to furnish their written objection/version to the said report and adduce oral and documentary evidence in support of their contentions, before the competent authority.
- f) A reasoned order shall be passed and communicated to the parties in respect of the alleged construction. On the basis of what transpires at the hearing and during inspection, the

proceedings shall be reached to its logical conclusion in terms of the provisions of Section 218 of the West Bengal Municipal Act, 1993.

- g) The age of the structure shall also be determined by the Engineering Department of the South Dum Dum Municipality in order to ascertain whether those constructions had come into existence before the municipal laws had come into operation.

The entire exercise shall be completed within a period of four months from the date of communication of this order.

The Court has not gone into the merits of the claims and counter-claims of the parties and the issues raised shall be decided by the competent authority.

The question of title, possession, encroachment, etc. shall not be gone into.

A copy of the writ petition along with a server copy of this order be served upon the Executive Officer, South Dum Dum Municipality, District-Kolkata-700074.

The writ petition is, thus, disposed of.

There shall be no order as to costs.

Parties are to act on the basis of the server copy of this order.

**(Shampa Sarkar, J.)**