

Item No.8
11.05.2023
Court. No. 19
GB

WPA 9865 of 2023

Rajat Tie-Up Private Limited & Anr.
Vs
The State of West Bengal & Ors.

Ms. Sulagna Mukherjee,
Ms. Natasha Roy

...for the Petitioners.

Mr. Susanta Pal,
Ms. Ananya Neogi

...for the State.

Affidavit-of-service filed in Court today, be kept on record.

The petitioner no.1 is the company and the petitioner no.2 is the director. The petitioner no.1 obtained a commercial premises in the building situated at L.R. Dag Nos.18, 19 and 24 popularly known as 'Kolkata International Haat', which was within the jurisdiction of Mohiary No.2 Gram Panchayat. Unit No.1G is on the first floor of the building.

The petitioners contend that suddenly, the respondent no.5 gave instructions to some masons and workers to construct an additional corridor covering all the windows of the first floor units in the said building. Such construction was without any permission from the concerned authority.

The sanction to the said building plan had been granted sometime in 2012 and the developer constructed the building as per the plan. Subsequently, such additional construction was started and the petitioners have reason to believe that the same was without any permission from the

permission granting authority. The petitioners approached the Pradhan of Mohiary No.2 Gram Panchayat with such allegations.

According to the petitioners, the external addition and alteration and construction of a long verandah/corridor covering the windows of the petitioners, had obstructed light and air. Intervention of the panchayat authorities for demolition of the same was prayed for. The panchayat authorities did not pay any attention to the petitioners' request. Hence, the writ petition has been filed.

The writ petition is disposed of with a direction upon the Mohiary No.2 Gram Panchayat to consider and dispose of the objection raised by the petitioners, which is Annexure-P/5 at Page-49 of the writ petition.

In case the height and the plinth area of the building indicates that the permission granting authority and/or the authority to effect demolition would be either the Zilla Parishad or the panchayat samiti, under the amended law, in that event, the matter should be referred to the said authority by the gram panchayat. If the panchayat authority retains the jurisdiction over such commercial structure, the panchayat authority will decide the issue accordingly. Irrespective of the authority which decides the matter and takes steps for demolition of any alleged unauthorized portion, the following procedure as laid down by the Court shall be followed:-

- a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioners and

the respondent no.5 and other interested parties.

An advance notice of the inspection shall be served upon the petitioners and the respondent no.5 and on all other interested parties. If the parties are not available to accept notice, the same shall be affixed at a conspicuous place in the respective premises.

- b) In case, it is found on preliminary inspection that there may be reasons to believe that the construction was without permission and was continuing, the authorities may take interim measures by stopping such construction.
- c) A report of such inspection shall be prepared along with the sketch map, indicating the extent and nature of unauthorized construction, if any.
- d) Such report shall be handed over to the parties. The questions to be decided would be whether the construction had been made without any permission or in violation of the building rules.
- e) A hearing shall be given to the petitioners and the respondent no.5 and all other interested parties. The parties must also be allowed to furnish their written objection/version to the report and adduce oral and documentary evidence in support of their contentions before the competent authority. All points raised by either party, will be decided.
- f) A reasoned order shall be passed and communicated to the parties. On the basis of what transpires at the hearing and during inspection, the

proceedings shall be reached to its logical conclusion in accordance with law.

It goes without saying that if the authority finally comes to a conclusion that there has been unauthorized construction and the same should be demolished, steps shall be taken for demolition thereof, strictly in accordance with law.

The court has not gone into the merits of the claims of the petitioners and the issues involved shall be decided independently.

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

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

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

(Shampa Sarkar, J.)