

Item No.243

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

27.09.2023
Ct-24
AGM

WPA 19742 of 2023

Jogindra Dutta

versus.

The State of West Bengal & Ors

Mr. Tanay Chakraborty

Mr. Shaunak Mukhopadhyay

Mr. Kallol Saha

Mr. Akash Ghosh

Ms. Shinjita Ray

...For the petitioner.

Mr. Arijit Sarkar

...For the private respondent.

The petitioner complains of unauthorized construction at the instance of the private respondent at holding no. 26, R.B.C. Road, Ward No. 28 under the Naihati Municipality.

Specific allegation is that construction has been made without obtaining any sanction from the Municipality.

It has been admitted by the petitioner that a suit for partition in between the parties is pending consideration before the learned Court below.

Contention of the petitioner is that in any undivided joint property, one of the co-owners, ought not

to raise construction, that too, without obtaining any permission from the municipality.

Learned advocate representing the private respondents submits, upon instruction that, no new construction is being made and only repairing work in the roof is being done.

It appears from the documents annexed to the writ petition that a notice of hearing was issued by the municipality fixing 8th August, 2023 for a joint hearing of the parties. The hearing, however, could not take place as the petitioner sought for an adjournment.

Any construction made at the subject premises ought to be done after obtaining permission/sanction from the Municipality.

The petitioner contends that the construction is a new one whereas the private respondents submits that the same is mere repairing of the roof.

To ascertain the proper facts, the engineers of the Municipality are directed to cause spot inspection upon prior notice to both the parties to ascertain the nature of construction made. Copy of the spot inspection report shall be supplied to both the parties and thereafter an opportunity of hearing shall be given to all the parties. Reasoned order shall be passed and communicated to all.

If it transpires that unauthorized construction exists, then necessary steps shall be taken by the Municipality to deal with the same.

The entire exercise shall be conducted at the earliest but positively within a period of twelve weeks from the date of communication of this order.

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.)