

21. 04.09.2023
bd. Ct.15

WPA 24956 of 2018

Sri Bholanath Paul

-vs-

Rajpur-Sonarpur Municipality & Ors.

Mr. Sankar Prasad Dalapati

Mr. Safik Dewan

Mr. Sourav Mondal ... for the petitioner.

Mir. Anuruzzaman ... for the Municipality.

The writ petition has been instituted restraining Rajpur-Sonarpur municipality to take coercive steps on the basis of a notice dated 26th November, 2018 issued by the Chairman of the said municipality. Such notice dated 26th November, 2018 was issued in terms of section 220 of the West Bengal Municipal Act, 1993.

Learned advocate representing the petitioner submits that there is dispute with regard to ownership of the plot and in connection therewith a civil suit is pending in order to demarcate whether petitioner is the owner of Plot No. 527 or 530. Petitioner claims ownership of plot no. 530. It has also been contended on behalf of the petitioner that though aforesaid notice under section 220 was issued in connection with plot no. 527 but in the report of the municipality at page 6 while indicating the deviations made by the petitioner plot no. 530 has been recorded. Based on the aforesaid situation it has also been submitted on behalf of the petitioner that unless and until the demarcation of plot is complete upon disposal of the pending suit whether there is deviation made while making

constructions as per sanctioned plan cannot be decided.

The learned advocate representing Rajpur-Sonarpur municipality submits that report has been filed in the form of an affidavit affirmed on 10th August, 2023 on behalf of Municipality in terms of the order passed by the coordinate Bench on this writ petition on 13th December, 2018. It has been submitted that in terms of the order dated 13th December, 2018 only exercise which was required to be carried out by the municipality is to visit the locale and to find out whether construction has been made by the petitioner on deviation of sanctioned plan or not. It has been clarified by the coordinate Bench vide order dated 13th December, 2018 as submitted on behalf of municipality that title dispute which is remaining pending in connection with the suit cannot be the subject matter of consideration so far as the writ court is concerned as well as municipality. It is also submitted that municipality upon visiting the locale found that there are certain deviations made by the petitioner while making construction as per sanctioned plan which are indicated in subparagraphs (a) (b) (c) under paragraph 5 of the report of the municipality.

Having considered the submissions made on behalf of respective parties and on perusal of the order of the coordinate Bench dated 13th December, 2018 passed on this writ petition as well as in consideration of the report filed by the municipality and exception filed by the petitioner it appears that

there are certain deviations made by the petitioner while making construction in terms of sanctioned plan as the same has been described in paragraph 5 of the report of the municipality.

It is correct as contended on behalf of municipality that the writ court is not the appropriate forum to decide the title of the plots being 527 and 530 and demarcation of the same. Only exercise which can be carried out by this Court in exercise of its power under Article 226 of the constitution of India is to examine whether petitioner has made constructions in terms of the sanctioned plan only. Since it has already been pointed out by the municipality in the report that there are certain deviations made by the petitioner violating the sanctioned plan this Court directs the concerned authority of Rajpur-Sonarpur Municipality to initiate a proceeding under section 218 of the West Bengal Municipal Act, 1993 within a period of two weeks from date and conclude the said proceeding within twelve weeks thereafter by passing final order.

However, it is made clear that before bringing the said proceeding into logical conclusion opportunity of hearing shall be afforded to the petitioner as well as private respondents to make deliberation before the concerned authority of the municipality.

The decision to be taken by the concerned authority of the municipality shall be communicated to the petitioner as well as private

respondents within one week after taking decision.

With the aforesaid direction the writ petition stands disposed of.

There shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)