

07. 02.02.2023
bd. Ct.24

W.P.A. 27273 of 2022

Shri Prabir Kumar Bhadra & Ors.

-vs-

Bhatpara Municipality & Ors.

Mr. Arunava Ghosh
Mr. Puspall Chakraborty
Mr. Prasanka Ganguly
... for the petitioner.

Dr. Madhusudan Saha Roy
... for the private respondents.

Mr. Dibyendu Chatterjee
Mr. Pritam Majumder
... for the Municipality

The petitioners complain of inaction on the part of the Bhatpara Municipality in taking steps for consideration of the representation submitted on 13th December, 2021 where a specific complaint was made that the private respondents were using the building for commercial purpose without necessary approval. The petitioners also contend that an illegal tin-shed was constructed by the private respondents atop the building.

A reminder was submitted by the petitioners before the Municipality in April 2022. The petitioners allege that the representation has not been taken up for consideration till date.

The petitioners submit that application was made to obtain information under the Right to Information Act, with regard to as many as fifteen queries in respect of the construction made by the private respondents. In reply to the said application, the municipality intimated the petitioners that the

building in question is old and existing and accordingly no information can be given.

By further information supplied by the Bhatpara Municipality, the petitioners were intimated that no records can be traced out in respect of the aforesaid property as the same is old and existing.

On a perusal of the representation filed by the petitioners in December, 2021 it appears that the petitioners stated that the building of the private respondents is being utilized for commercial purpose and the petitioners are not aware as to whether any necessary approval has been obtained by the private respondents for utilization of the said building for commercial activity in addition to the same being used for residential purpose.

On a perusal of the application made under the Right to Information Act it appears that, information was sought on various issues in respect of the property of the private respondents.

The queries imply that the petitioners were trying to gather information from the Municipality to find out loopholes in the construction and the mode of use of the adjacent property enjoyed by the private respondents. Despite the information supplied by the Municipality that the building is old and existing, the petitioners filed further application under the Right to Information Act, to collect more information from the municipality.

For the second time the petitioners were intimated by the municipality that, as the building

is old and existing, no records can be traced out.

The petitioners did not stop there. The present writ petition has been filed seeking for a directing upon the municipality for consideration of their representation.

It is clear that the petitioners, without having proper knowledge, have filed the present writ petition as counter blast to the earlier writ petition filed by the private respondents alleging illegal and unauthorized construction at the instance of the present petitioners.

The learned advocate representing the private respondents has produced before this Court the permission issued in favour of Pritam Sarkar, respondent no. 5 herein for change of character and use of land from Bastu to Dokan.

The private respondents have also produced before this Court the receipt of the property tax paid in respect of the subject property and the recording in the municipal assessment book which mentions that the structure is a four storied building with pacca asbestos shed giving details of the rooms, the covered area, stair-case etc. It has been submitted that the building in question is in existence from the year 1972 and the constructions are in place for quite sometime.

Learned advocate representing the Municipality submits that the ward in question was amalgamated with the municipality in the year 1995. The subject construction was made prior to amalgamation of the ward with the municipality,

accordingly, the municipality does not have records with regard to sanction of the plan of the building in question.

From the submissions made on behalf of all the parties and upon perusal of the documents placed before this Court there are genuine reasons to conclude that the writ petition has been filed with mala fide intention to pressurize the private respondents not to proceed with the complaint lodged against the petitioners alleging unauthorized construction. Whether the construction made by the petitioners is in accordance with law or not is a separate issue to be decided by the municipality.

It does not appear that the private respondents have made any construction which is unauthorized. The fact that the building in question is an old one has been ascertained by the municipality. There is record in favour of the private respondents with regard to change of character of the land in question. Taxes have also been paid in respect of the said property.

In view of the above, the prayer of the petitioner cannot be accepted and no relief can be granted to the petitioners in the instant case.

The writ petition stands dismissed.

The documents handed over by the learned advocate representing the private respondents being the Tax Receipts dated 18th February, 2022 and 26th August, 2022, the permission for change of character and use of land conversion dated 21st November, 2016 and the

photocopy of the municipal register be retained with the records.

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

(Amrita Sinha, J.)