

Item No.4  
22.11.2023  
Court. No. 2`  
GB

*CALCUTTA HIGH COURT  
IN THE CIRCUIT BENCH AT JALPAIGURI  
APPELLATE JURISDICTION*

W.P.A. 1264 of 2023

Smt. Sarita Marda  
VS  
The State of West Bengal & Ors.

*Mr. Rajat Das,  
Ms. Srijana Thapa*

*...for the Petitioner.*

*Mr. Subir Kumar Saha  
Mr. Momenur Rahman*

*...for the State.*

*Mr. Ujjwal Laksan,  
Mr. Bikash Singha*

*...for the Municipality.*

*Mr. Deborshi Dhar*

*...for the Respondent Nos.7 to 9.*

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

The petitioner alleges that the respondent nos.7 to  
9 who belong to the same family, have made an illegal  
construction on a plot of land within the jurisdiction of  
Kalimpong municipality. According to the petitioner, the  
said construction has been made without any sanction  
plan and was obstructing a natural spring.

Mr. Dhar, learned advocate appearing on behalf of  
the respondent nos.7 to 9 submits that the construction  
was started on the basis of the permission granted under  
the Banglar Bari Scheme which is an off shoot of the  
Pradhan Mantri Awas Yojna. The permission letter from

the Kalimpong municipality has been annexed to the writ petition, which indicates that the respondent no.8 was issued the permission letter and the beneficiary number of the said respondent had been mentioned in the said letter.

It also appears that the construction was made time bound and was subject to certain procedure. The model plan which was permitted by the urban planner, Kalimpong municipality appears at page 84 of the said writ petition. According to Mr. Dhar, the construction is to be made strictly in accordance with such model plan and no further sanction or approval from the municipality was required for construction under the scheme.

Mr. Dhar further submits that the land was settled in favour of the predecessors of the said respondents long time ago and there was no encroachment over any natural spring. Reliance has been placed on an enquiry report prepared by the concerned Block Land and Land Reforms Officer, which does not indicate that there was any illegality in the actions of the respondents. Report also reveals that the respondent nos.7 to 9 were in possession of around three decimals of land.

Mr. Laksan, learned advocate appearing on behalf of the municipality also submits that in case of construction under any housing scheme, the beneficiary has to strictly comply with the model plan/drawing given by the municipality.

Mr. Rahman, learned advocate for the State files a report prepared by the Inspector-in-Charge, Kalimpong Police Station, which indicates that the Kalimpong police station had made an enquiry in the presence of the petitioner's caretaker and found that the land of the petitioner and the land on which the construction has been started were adjacent to each other. The police authorities had referred the matter to the Chairperson, Board of Administrator, Kalimpong municipality for clarification with regard to the issue involved.

Under such circumstances and having heard the rival contentions of the parties, the only issue to be determined here is whether the respondent nos.7 to 9 had made any construction in violation of the model plan, which was allegedly permitted by the municipality. The municipal authority shall cause an enquiry and dispose of the representation of the petitioner who had complained of the alleged illegal construction and encroachment of a natural spring by the respondent nos.7 to 9.

While doing so, the following procedure shall be adopted:-

- a) An inspection of the site shall be conducted.

Such inspection shall be held in the presence of the petitioner and the respondent nos.7 to 9. An advance notice of the inspection shall be served upon the petitioner and the respondent nos.7 to 9. If the parties are not available to accept

notice, the same shall be affixed at a conspicuous place in the premises.

- b) In case, it is found on preliminary inspection that there may be reasons to believe that the construction was in deviation of the model plan 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 question of right, title, possession, encroachment and boundary dispute, shall not be decided by the municipality. The question to be decided by the municipality would be whether the construction had been started as per the scheme and whether the model plan was being followed.
- e) A hearing shall be given to the petitioner and the respondent nos.7 to 9. 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.

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

The entire exercise shall be completed within a period of four months from the date receipt of petitioner's representation.

Accordingly, the writ petition is disposed of.

However, there shall 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.)**