

16.11.2023
Sl. No.2
srm

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

W.P.A. No. 2438 of 2023

Smt. Lily Sarkar

Vs.

The Siliguri Municipal Corporation & Ors.

Mr. Satyam Sarkar

....for the Petitioner.

Mr. Debarshi Dhar,
Ms. Osmita Mukherjee

.....for the Siliguri Municipal Corporation.

Despite two attempts to serve the respondent No.3,
the track report has come back with the endorsement that
the addressee is not available at the address mentioned in
the cause title.

Learned Advocate for the petitioner submits that the
petitioner does not know any other better address of the
respondent No.3.

The postal documents are taken on record and an
earlier affidavit of service was already on record.

The petitioner alleges that the respondent No.3 has
been raising an unauthorized construction on the western
side of RS Plot No.337 of mouza Dabgram, Police Station

Bhaktinagar (old) now NJP, District-Jalpaiguri in violation of the plan sanctioned by the Siliguri Municipal Corporation. According to the petitioner, her brothers had entered into a development agreement with the respondent No.3. On the basis of which, a multi-storeyed building was allegedly being constructed. The petitioner further submits that a representation was sent to the Siliguri Municipal Corporation, more specifically, the respondent No.2 about such illegal construction, but no steps have been taken.

This Court is of the view that the Corporation was duty bound to dispose of the said representation of the petitioner upon giving an opportunity of hearing to all interested parties, including the respondent No.3 and any other persons connected with such construction.

The law requires the Corporation to take steps in accordance with the provisions of the West Bengal Municipal Corporation Act, 2006, in case any unauthorized construction either in violation of a plan or in absence of a plan is detected. However, in order to arrive at such conclusion, an inspection is required to be held in the presence of the parties.

Thus, the writ petition is disposed of with the following directions:

- a) An inspection of the site shall be conducted by an authorized engineer. Such inspection shall be held in the presence of all interested parties, with 48 hours advance notice to the petitioner/complainant, the respondent No.3 and other interested parties. The notice shall be affixed in the premises, which shall operate as a notice to all.
- b) A report of the inspection shall be prepared along with the sketch map indicating the extent of deviation, if any.
- c) Such report shall be handed over to the petitioner as also the interested parties and the respondent No.3.
- d) A hearing shall be given by the competent authority to the petitioner, the respondent No.3 and all other interested parties. The parties must also be allowed to furnish their written objection/version to the said report and adduce oral and documentary evidence in support of their contentions before the competent authority.
- e) A reasoned order shall be passed by the competent authority 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 terms of the statute. If any unauthorized construction is detected, the same shall be demolished in accordance with law.

The Court has not gone into the merit of the claims and counterclaims of the parties and the issues shall be decided independently.

The question of right, title and interest of the parties shall not be gone into. The only issue to be decided would be whether there has been any violation of the building plan or unauthorized construction or both.

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

The writ petition is, thus, disposed of.

There shall be no order as to costs.

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

(Shampa Sarkar, J.)