

08.07.2024
Sl.No.34
Ct. No.15
S.A.

WPA 2858 of 2024

Gour Chandra Saha & Ors.
-vs-
The State of West Bengal & Ors.

Mr. Uttiya Ray
...for the petitioners
Mr. Subhasis Bandopadhyay
...for the Municipality
Mr. K. J. Yusuf
Ms. Rupsha Chakraborty
...for the State

Let the affidavit of service filed by the petitioners be kept with the records.

Respondent no.8 is not represented.

It has been submitted by the learned advocate appearing for the petitioners that the name of respondent no.7 has been inadvertently added as a respondent. She passed away before filing of the writ petition.

In view of the above, let the name of respondent no.7 be struck down from the array of respondents.

In the earlier round of writ petition, the petitioners sought for a direction upon Burdwan Municipality to take steps for removal of an encroachment on public footpath in front of the petitioners' shop. The petitioners also alleged that the Municipality had illegally placed an iron railing in front of their shop room.

A Coordinate Bench of this Court by an order dated April 19, 2023, directed Burdwan Municipality to consider the representation filed by the petitioners in accordance with law and to pass a reasoned order. In compliance with the said order dated April 19, 2023, the Municipality held an inspection at the relevant premises on August 18, 2023, after giving notice upon all concerned parties.

During the inspection, the Municipality found that respondent no.8 had made a tea stall under a tarpaulin shed on the footpath in front of the petitioners' shop. The Municipality also found that though the deed submitted by the petitioners revealed that they had purchased a constructed area of about 220 sq.ft., the spot inspection revealed that they are in possession of a 423 sq.ft. constructed area. The petitioners could not produce any sanctioned plan for the extra construction.

On September 27, 2023, the Municipality decided that a fresh inspection would be held in presence of the Ward Councillor of the Municipality.

The matter was taken up for final hearing on November 30, 2023, when the Municipality passed the following order :

“In Continuance to this office order dated- 27/09/23 the site inspection was held on 09/11/23 at 12.30 pm after notice to all concerned and on field

verification and considering the available records it appears that no documents submitted by the petitioners in respect of their pucca construction i.e. sanction plan etc which is not tallied with the schedule of deed no- 1-4431 & 4432. That the petitioners had purchased an area of 435 sq.ft. and the constructed roof area of ground floor is 423 sq.ft. That the Pvt respondent run a tea stall with the help of tarpaulin and bamboo over the municipal plot which does not come within the purview of construction so the complaint of the petitioner is hereby dropped. That with regard to unauthorized construction of the petitioners necessary steps are required, so plan In-Charge, Burdwan Municipality is instructed to take appropriate steps at the earliest. Considering the inspection report the aforesaid order is passed for information and necessary compliance to all concerned. Hence, the matter is disposed of and information be given to all concerned."

I find substance in the submission advanced by the learned advocate appearing for the petitioners that the Municipality should not have stayed its hand on the ground that the nature of construction raised by respondent no.8 does not come within the purview of 'construction'. In my view, when it is an admitted position that respondent no.8 has encroached the footpath, the Municipality should have initiated

proceedings under Section 184 of the Bengal Municipal Act, 1993.

At the same time, the Municipality should also be allowed to proceed against the writ petitioners, if it is found that the petitioners have made any unauthorized construction at the relevant premises.

In view of the above, I set aside the order dated November 30, 2023, passed by the Burdwan Municipality and direct to initiate a proceeding against respondent no.8 under Section 184 of the West Bengal Municipal Act, 1993. I also direct the Municipality to proceed against the petitioners for the alleged unauthorized construction in terms of provision of Section 218 of the said Act. Both the proceeding should be concluded within a period of three months from the date of communication of this order.

With the aforesaid direction, **WPA 2858 of 2024** is disposed of.

(Kausik Chanda, J.)