

Sl. No.01
17.12.2024
Suman
Ct. 15

WPA 6105 of 2024

Aniruddha Paul
Vs.
The State of West Bengal and Ors.

Ms. Pampa Dey (Dhabal)
Ms. Sangita Banerjee
..for the petitioner

Mr. Raghunath Chakraborty
Ms. Mohona Das
..for the Municipality

Mr. Rajdeep Bhattacharya
Mr. Nilanjan Pal
Ms. Adrija Bhattacharya
..for private respondents

Ms. Munmun Ganguly
Ms. Tuli Sinha
..for the State

The facts of the case have been recorded in the
order dated December 2, 2024. The said order is quoted
below:

*“The affidavit of service filed in Court today
is kept on record.*

*The petitioner alleges unauthorised
construction of a boundary wall at Khatian No.
208, Dag Nos. 350 and 356, J.L. No. 49, P.S.
Mahestala, Mouza Parbangal, District 24 Parganas
(South).*

The learned advocate representing respondent no. 7, on the other hand, submits that the boundary wall has been in existence for a long time. No new construction has been undertaken.

The learned advocate for the petitioner, however, prays for the appointment of a Special Officer to conduct a spot inspection.

In light of this, Mr. Anath Nath Naskar (Mob. No.9831596091) is appointed as a Special Officer. The Special Officer is directed to inspect the premises in question, to ascertain whether the boundary wall has been in existence for a long time or not. The report should also indicate the length and height of the wall.

The petitioner and their representatives are required to be present during the inspection.

The Special Officer shall be compensated with a consolidated fee of Rs. 25,000/-, which shall be borne by the petitioner.

The inspection is scheduled for December 7, 2024, at 1:30 p.m. The Mahestala Municipality shall ensure that a competent officer is deputed to be present during the inspection.

As all parties are present before the Court, the Special Officer is not required to issue a separate notice for the inspection.

The Special Officer shall submit a report to this Court on the next date of hearing.

The matter is to be listed on December 9, 2024 as "Upgraded Motion."

The relevant portion of the report filed by the Special Officer is quoted below:

"3. In presence of all the persons present as stated above, I examined and inspected the boundary wall, which was identified by the petitioner himself at the beginning of the inspection. I measured the boundary wall. There are two portions of boundary wall, one portion is 8 feet 6.5 inches or 2.6 meter in height and 14 feet 9 inches or 4.5 meter in length (hereinafter referred to as 'First Portion'); whereas the other portion of the wall has two parts, the bottom portion's height is 3 feet 10 inches or 1.165

meters and the upper portion is 3 feet 3 inches or 0.98 meter in height, and overall length is 29 feet 1.5 inches or 8.88 meter (hereinafter referred to as 'Second Portion').

Upon inspection, it appears to me that the first portion and the upper part of the second portion of the wall is not an old construction. However, the exact age of the wall can be determined with the help of technical expert. Photographs of the wall were taken at the time of inspection.

Relevant photographs of the boundary wall are annexed herewith and collectively marked as annexure 'A'."

Rule 73 of the West Bengal Municipal (Building)

Rules, 2007 provides the following:

“73. Boundary wall.- *No boundary wall exceed 2 meters in height on the road side, the solid portion of compound walls shall not exceed 1.5 metres in height. The foundation of boundary wall, below ground level, shall not encroach upon any adjacent land outside the plot area.”*

It is also important to note the definition of "building" as provided in Section 2(3) of the West Bengal Municipal Act, 1993:

“2(3). “building” *means a structure constructed for whatsoever purpose or of whatsoever materials, and includes the foundation, plinth, wall, floor, roof, chimney, fixed platform, verandah, balcony, cornice, or projection or part of a building or anything affixed thereto or any wall (other than boundary wall of less than three metres in height) enclosing or intended to enclose any land, sign or outdoor display structure, but does not include a tent, samiana or tarpaulin shelter;”*

The learned advocate representing the petitioner submits that the relevant construction should be considered in light of Rule 73 of the West Bengal

Municipal (Building) Rules, 2007. He asserts that the first portion of the wall, which exceeds two meters in height, should be demolished.

There exists an apparent contradiction between Rule 73 of the West Bengal Municipal (Building) Rules, 2007 and Section 2(3) of the West Bengal Municipal Act, 1993.

The Act permits the construction of a boundary wall up to three meters in height without requiring approval from the Municipality.

No doubt, in the event of a conflict between the Act and the Rule, the Act should prevail.

The wall in question is, therefore, within the permissible limit of Section 2(3) of the Act of 1993.

Even for sake of argument, if it is presumed that Rule 73, as quoted above, shall apply in this case, I find that the alleged deviation is minor in nature and does not warrant the intervention of this Court.

Accordingly, **WPA 6105 of 2024** is dismissed.

Urgent photostat certified copy of this order, if applied for, be supplied to the learned advocates for the parties on usual undertakings.

(Kausik Chanda, J.)