

11.11.2024
Ct. 39
Sl.no.9
samarpita

**WPA 10649 of 2023
(Assigned)**

**Kajal Banerjee & Anr.
-Vs-
The Barasat Municipality & Ors.**

Mr. Purna Ch. Paul Chowdhury,
Mr. Anupam Das Adhikari,
Mr. Krishnendu Paul Chowdhury
Mr. Gopal Paul Chowdhury
... for the petitioners

Mr. Supriya Roy Chowdhury,
Mr. Sankar Ghosh
... for the Barasat Municipality
Mr. Debdutta Sen
Mr. Alokesh Dalai
Ms. Ledia Dasgupta
..for the respondent no.6

The petitioners' case in a nutshell is that the petitioners are the owners of the property in the first floor of premises no. 22/B/4, Kshetra Nath Chatterjee Road, Kolkata 700124 by way of purchase in the year 2000 -2017 respectively. The private respondent No. 6 is the owner of the ground floor of premises no. 22/B, K.N.C. Road, Kolkata-700124 by way of purchase in the year 2009. The private respondent No. 6 has been carrying on business of beauty parlor in her portion in the ground floor of such premises. In order to carry on such business of beauty parlor, the private respondent

No. 6 has made addition and/or alteration in her portion in ground floor by removing intervening wall between the two rooms and has also made changes in the outside wall. Such addition and/or alteration in the ground floor have caused damages in the first floor of the premises of the petitioners. The petitioners on 4th October, 2021 made a representation before the Board of Administrator, Barasat Municipality, being the respondent No. 3 herein for redressal of their grievances. However, since no such steps were taken the petitioners issued a reminder on 9th October, 2022. Even after receiving of such reminder no steps were taken by the Barasat Municipality. The dispute was also reported to the Officer-in-Charge, Barasat Police Station, being the respondent No. 5 herein, who has also failed to take any action. Hence, this writ petition.

Mr. Purna Ch. Paul Chowdhury, learned advocate appearing for the petitioners submits that due to removal of the intervening wall there has been damages to the premises of the petitioners. He further submits that the Municipality is under statutory obligation to perform its duties and should also monitor that no such illegalities is done by the residents violating the rules of the Municipal Act. To buttress his contentions, he relied on the decision of Hon'ble Supreme Court passed in **Sri K. Ramadas Shenoy versus The Chief Officers, Town Municipal Council, UDIPI and Others** reported in **(1974) 2 SCC 506**. The respondent No. 1, Barasat

Municipality has failed to take any step in spite of repeated persuasion from the side of the petitioners in this regard. He seeks for appropriate orders for damages as well as for restoration of the building in the ground floor to its original position. He also indicates that the petitioners have incurred Rs.7 lakhs for doing renovation work of damages caused due to such addition and/or alteration made by respondent No. 6 in the ground floor of premises in question.

Mr. Debdutta Sen, learned advocate appearing for the private respondent no. 6, at the very outset, submits that so far as the outer wall of the ground floor is concerned, that has been restored. He also informs the Court that the respondent No. 6 is no longer carrying on business of the beauty parlor. Referring to the site inspection report of the Barasat Municipality, he submits that there is no damage notice excepting a hair line crack in the stair case which may be due to moisture in the steel. He undertakes that the intervening wall in the ground floor would be restored by respondent No.6 if the Hon'ble Court so directs. Further referring to the decision of the Hon'ble High Court of Allahabad in ***Balkaran Das Gupta versus Union of India*** reported in ***2022 SCC OnLine All 909***, he submits that the damages, as claimed by the writ petitioners, in the present writ petition, which are disputed facts requires detailed examination of evidence which can better be appreciated by a civil court, and

therefore, the prayer for damages of the writ petitioners is short of merit.

During hearing of the writ petition, pursuant to order of this Court dated 11th September, 2024, Barasat Municipality, the respondent no.1 herein, has filed further report which is taken on record.

The principal contentions of the petitioners in the present writ petition are of addition and/or alteration in the ground floor of the premises made by respondent no.6 which has led to the damages to the floor of the petitioners. It has been submitted on behalf of the respondent No. 6 that the outer wall of the room in the ground floor has been restored to its earlier position, which has not been disputed by the petitioners. With regard to the intervening wall, on perusal of the report filed by Sub-Assistant-Engineer dated 18th September, 2024, it is found that the partition/ intervening wall between the two rooms in the ground floor is absent. Learned advocate appearing for the respondent no. 6 has undertaken to restore the intervening wall in between the two rooms in the ground floor of the premises.

In view of the submissions advanced on behalf of the respondent no. 6 and the undertakings thereof, the respondent no. 6 is directed to restore the intervening wall in the ground floor of the premises in question in the presence of the engineer of the Barasat Municipality, the respondent no.1 herein, and the

petitioners within two months from the date of this order.

This Court finds substance in submissions of Mr. Chowdhury, learned advocate for the petitioners relying on *Sri K. Ramadas Shenoy (supra)* that the Municipality should act as per statutory rules pertaining to the act of addition/alteration by respondent no.6. Be that as it may, since respondent no.6 has undertaken to restore the intervening wall, this Court recuses to make any further observation.

So far as the prayer for damages is concerned, this Court finds substance in the submission of learned advocate on behalf of the respondent no. 6 relying on *Balkaran Das Gupta (supra)* that the assessment of damages would necessarily require the Court to investigate various disputed facts which will not be permissible for the simple reason that such determination requires detailed examination of evidence which can better be made in a civil suit before a competent civil court.

With the above observations, the writ petition is disposed of.

All connected applications, if any, stand disposed of.

Interim order, if any, stands vacated.

There will be, however, no order as to costs.

All concerned parties shall act in terms of the copy of the order duly downloaded from the official website of this Court.

Urgent photostat copy of this order, if applied for, be given to the parties upon compliance of necessary legal formalities.

(**Bivas Pattanayak, J.**)