

IN THE HIGH COURT AT CALCUTTA
(Constitutional Writ Jurisdiction)
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 12958 of 2023

(Assigned)

Badal Ghosh

Vs.

The State of West Bengal & Ors.

For the Petitioner : Mr. Ayan Mitra,
Mr. Dilip Mumar Mandal,
Mr. Mritunjoy Saha.

For the Respondent no. 9 : Mr. Supriyo Kumar Roy,
Ms. Sima Roy.

For the Baranagar Municipality : Mr. Arijit Dey.

For the State : Ms. Sipra Mazumder,
Ms. Prativa Ghatak.

Hearing concluded on : 26.06.2024

Judgment on : 11.07.2024

Shampa Dutt (Paul), J.:

1. The present writ petition has been preferred against the inaction of the respondents (concerned), Baranagar Municipality, in respect of the allegedly illegal/unauthorized construction being made by the private respondent no. 9 and agents in raising the illegal constructional works towards the eastern side of the petitioner's residence at 18, Ramlal Banerjee Road (Previously known as 151/A, Kashinath Dutta Road), P.S. – Baranagar, Ward No. 25, Kolkata-700 036, without leaving any side space as provided under the West Bengal Municipal Act, 1993 and its Rules, thereby further damaging the property of the petitioner's residential house in violation of law and infringement of fundamental rights.
2. **At the time of hearing, a report as to the status of the disputed construction has been submitted before this Court by (1) the Baranagar Municipality and (2) by the Inspector-in-Charge, Baranagar Police Station.**
3. The relevant portion of the reports are reproduced herein for convenience:-
 - a) **From the report of the Baranagar Municipality is as follows:-**

“Ref:- W.P.A. No. 12958 (W) of 2023

Dated: 12.06.2024

*....Sub Asst. Engineer, Baranagar Municipality inspected the site second time on 12.06.2024 and found that on the premises 151 Kashi Nath Dutta Road building already constructed upto 2nd floor (i.e. Upto Three Storied). As per sanctioned Building Plan Vide No: **PW/BS/049/25** dated **22.04.19** Plan Sanctioned as G+II, storied building and 6'-7" rear open space provided. At the time of inspection, under*

signed found the rear open space as per the sanction plan. At the time of first time inspection the rear open space found as 6'-3". The owner of the property broken the back side and provided the rear open space as per the sanction plan.

More over it is also found that the area for the lift is already been constructed, but till now the owner is not installed the lift. Though, the owner not obtain any sanction plan from the municipal authority.

**Sd/-
Sub-Asst. Engineer
Baranagar, Municipality"**

b) Report of the Inspector-in-Charge, Baranagar Police Station:-

**"Ref:- W.P.A No- 12958 of 2023 Badal Ghosh -Vs- The
State of West Bengal & Ors.**

Dated: 17.05.2024

In course of enquiry officer of Baranagar PS had been to 151/A, Kashinath Dutta Road), PS-Baranagar, ward no -25, Kolkata-700036 and met with the petitioner. On being asked petitioner stated that private respondent number 9 is residing towards the Eastern side of the petitioner's premises No. 151/A, Kashinath Dutta Road), PS-Baranagar, ward no-25, Kolkata-700036. He also stated that in the year of April, 2023 when private respondent no. 9 had reconstructed his above petitioner's house got damaged due to vibration and the petitioner and his family members are suffering from the fear that their house has been damaged. He also stated that private respondent no. 9 has constructed his building without leaving the side space and violated the provision of West Bengal Municipal Act, 1993. Petitioner had sent a complaint to the Principal Secretary, The Ministry of Municipal Affairs Govt. of West Bengal Writers, Buildings, Kolkata-700001. In this regard the matter was sent to the Chairman of Baranagar Municipality through SDO, Barrackpore for an enquiry. Chairman of Baranagar Municipality enquired the matter on 22.08.2023 by the concerned Engineer and report was submitted before Hon'ble High Court vide their Letter No:79/1(3)/UDMA-19011(11)/12/2021-GENL, SEC-Dept. of UDMA, Dated: 22.01.2024. During enquiry I also met with respondent no. 9. On being asked he stated that he had constructed his building after getting sanction plan from Baranagar Municipality and left the space 6' 6" from the boundary of the petitioner's house.

On perusal of the PS record it has come to light that petitioner submitted a petition which was enquired by the officer of Baranagar PS vide Part IV no-454/23 and he reported that the matter was Civil in Nature. This refers to Baranagar PS G.DF.E. No-23 Date-01.05.2023.

The matter is completely civil in nature. Considering the gravity of the civil dispute, the police personnel of this PS are keeping sharp watch to keep peace and tranquility at the area over the aforesaid issue. This refers to Baranagar PS GDE No.1006, Dated-15.05.24.....

Sd/-
Inspector –In-Charge
Baranagar Police Station
Barrackpore Police Commissionerate”.

4. The writ petitioner has used an exception on affidavit in respect of the report dated 12.06.2024 filed by the Baranagar Municipal Authority, stating therein that:-

“The report is not properly prepared by spot inspection and there is no whisper in the report as to the spot inspection in presence of the petitioner or the private respondent. Even that the report also has concealed some material points though which are relevant for the purpose of adjudication of the writ application. The side space as mentioned in the report is not proper for exact measurement. It is submitted that the private respondent also installed the boring pump adjacent to the wall of the building of the petitioner on the Eastern Side and the area of the lift already been constructed without the sanction causing thereby the building of the petitioner has been heavily damaged. The construction has been made partly G+2 and partly G+3, without the sanction from the authority.”

5. Rest of the contention in the exception are as stated in the writ petition.
6. From the report submitted by the **police** it appears that the police have stated that **on enquiry it was found that the dispute is civil in nature.**
7. **The Baranagar Municipality has clearly stated that the building in dispute has been constructed upto the 2nd floor, which is in**

accordance with the sanction plan. About rear open space also, it is as per sanction plan.

8. It appears that area for lift has been constructed, but lift has not been installed. **No sanction has been taken for installation of lift.**
9. The grievance of the writ petitioner is regarding the side space to be left for construction, which appears to be unfounded, in view of the report of the municipality and report of the police, who has rightly stated that the said dispute is civil in nature. No documents have been filed by the petitioner in support of his contention that due to the construction made by the petitioner, his property is being damaged.
10. **Thus, the writ petition is disposed of with the direction that the Municipality shall ensure that no lift is installed by the private respondents without proper sanction, which is to be considered in accordance with law, and regarding the area in dispute, that is to be decided by a civil court, when approached.**
11. **The writ petition is accordingly disposed of.**
12. No order as to costs.
13. All connected application, if any, stands disposed of.
14. Interim order, if any, stands vacated.
15. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)