

3.
17-05-2024
(Ct. no.655)
debajyoti

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE**

WPA 15140 of 2023

**Gautam Dutta & Anr.
Vs.
The State of West Bengal & Ors.**

Mr. Shibendra Nath Chattopadhyay,
Mr. Priyam Misra,
Mr. Sanket Chandra,
Mr. Amitava Chakraborty
... For the Petitioners.

1. Learned counsel, appearing for the writ petitioners, is present.
2. Despite service effected upon the respondents, none appears on behalf of them at the time of hearing.
3. Affidavit of service filed by the petitioners be kept with the record.
4. It is stated by the petitioners that they have land at Ward No.19, Holding No.539/9 at 13/10, Priya Nath Ghosh Street, Post Office – Belghoria, Kolkata – 700056. The respondent no.6 is a cohabitant of the petitioners and his house is situated just contiguous to the northern portion of the land of the petitioners.
5. It is further stated by the petitioners that the said private respondent no.6 obtained a sanctioned plan of two-storied building from Kamarhati Municipality, but instead of constructing a two-storied building, he subsequently constructed a three-storied building without having any sanctioned plan, which is completely illegal and unauthorized.

6. It is submitted by learned counsel for the petitioners that the second floor of the house of the private respondent is in dangerous position towards the land of the petitioners and it may collapse at any point of time resulting of which the petitioners and the adjacent other plot holders may suffer irreparable loss and injury. Private Respondent has allegedly fixed the drainage and water pipe on his alleged illegal second floor and dirty water is pouring on the land of the petitioners. These petitioners repeatedly requested the private respondent to demolish the said alleged illegal construction but he did not pay any heed towards the request of the petitioners.

7. Petitioners sent representation on 12-03-2020 to the opposite party no.2/ Chairman Kamarhati Municipality stating all the facts of alleged illegal construction allegedly made by the respondent no.6. But as no step has yet been taken. The petitioners along with other neighbors again submitted another representation on 16-03-2020 before the said authority. They personally went to the Kamarhati Municipality and the authority concerned gave them oral assurance that the alleged illegal construction made by the respondent no.6, would be demolished. But till date, no action has been taken on behalf of the said authority concerned.

8. At the time of hearing, learned counsel, appearing on behalf of the petitioners, submitted the copy of extract of minutes of the proceeding of the meeting of the Chairman-in-Council of Kamarhati Municipality which was held on 17th August, 2023 whereby the said respondent no.6 was directed to produce the proper sanctioned plan in respect of the second floor which he has allegedly constructed. But

the said private respondent failed to submit any paper in respect of the construction of the said floor.

9. The attention of this Court is further drawn to a letter addressed to the respondent no.6 sent by the Chairman, Kamarhati Municipality dated 24-11-2020, wherein the said respondent no.6 was requested to appear before the Chairman-in-Council on 17-08-2023. It appears that on that date, although he was present, but refused to sign the attendance sheet. The Chairman-in-Council decided to demolish the illegal tin shed on the first floor as made by the respondent no.6. It is submitted by learned counsel that despite the said direction, the alleged illegal construction made by the private respondent has not yet been demolished.

10. I have considered the submission advanced by learned counsel for the petitioners and have consulted all the materials submitted in connection with this case. Since the inspection has already been held by Kamarhati Municipality, so the Chairman, Kamarhati Municipality, being the respondent no.2 is hereby directed to dispose of the said representation made by the present petitioner dated 12.03.2020 (Annexure P-1) and petition dated 16.03.2020 (Annexure P-2) within a month from the date of communication of the order as per the relevant provisions of law.

11. The respondent no.2 is further directed that the opportunity of being heard should be given to all the necessary parties before passing any order in connection with the application filed by the petitioners.

12. The aforesaid respondent shall restrict the consideration of the representations of the petitioner with regard to construction only and not enter into or decide any private dispute of the parties regarding

right, title and interest in respect of the aforesaid land.

13. The respondent no. 2 is also directed to pass a reasoned order and communicate the same passed by it over the representations made by the petitioner to the parties concerned immediately thereafter.

14. Let a copy of this order be communicated to the respondent no. 2/the Chairman. Kamarhati Municipality along with a copy of annexure 'P-1' and 'P-2' appended with the writ petition.

15. All parties will be at liberty to rely upon documents in support of their stand at the time of hearing before the authority.

16. WPA 15140 of 2023, stands disposed of.

17. Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Prasenjit Biswas, J.)