

22 12.03.2024
NB Ct. 24

In The High Court At Calcutta
Constitutional Writ Jurisdiction
(Appellate Side)

WPA 27350 of 2023

Abhijit Dutta
Vs.
The State of West Bengal & Ors.

Mr. Souynak Bhattacharya,
Mr. Sounak Mondal.
...for the petitioner.

Mr. Subhasis Bandopadhyay.
...for the municipality.

Mr. Pradip Kumar Mondal,
Mr. Bishnupada Jana.
...for the State.

This order dated 26th September, 2023 passed by the Board of Councillors, Bardhaman Municipality allegedly in compliance with the direction passed by this Court in WPA 14261 of 2023 is impugned in the instant writ petition.

The petitioner filed an earlier writ petition alleging unauthorised construction at the instance of the private respondent. By the impugned order, the Board of Councillors unanimously decided that the prayer of the petitioner will be taken up for consideration after submission of land records in the name of the petitioner.

In the instant writ petition, the record of rights in respect of Dag No.1636 recorded in the name of the private respondent is annexed. It appears therefrom that the plot in question is recorded as 'pukur'.

Specific allegation of the petitioner is that construction has been made over the aforesaid plot of land, which is recorded as 'water body' without obtaining any sanction and without conversion of the classification of the subject land.

The Court is at a loss to understand as to why the records of the petitioner's land have been sought for deciding the issue of unauthorized construction made at the behest of the private respondent. The municipality ought to ascertain as to whether the construction made at the behest of the private respondent is in accordance with any plan sanctioned by the municipality only after obtaining the permission to convert the classification of the land.

Learned advocate representing the municipality produces a copy of the communicating memo dated 19th January, 2024 addressed to the petitioner. On a perusal of the same, it appears that the municipality has requested the petitioner to remove the unauthorised construction within a fortnight, failing which the same will be demolished by the municipality and cost of demolition recovered from the petitioner.

Learned advocate representing the municipality submits that the construction in question as referred to in the communicating memo dated 19th January, 2024 is, in fact, the construction made by the private respondent and not the petitioner herein.

The memo dated 19th January, 2024 appears to be absolutely vague and cryptic. The same cannot be considered

to be a reasoned order in compliance of the direction passed by the Court.

The impugned communication dated 26th September, 2023 and the subsequent communicating memo dated 19th January, 2024 are, accordingly, set aside.

Bardhaman Municipality is directed to reconsider the allegation of unauthorised construction made by the petitioner strictly in accordance with law and pass a reasoned order dealing with the unauthorised construction.

A decision shall be taken in the matter at the earliest but positively within a period of eight weeks from the date of communication of this order.

An opportunity of hearing shall be provided to the parties prior to final disposal of the allegation of the writ petitioner.

The writ petition stands disposed of.

Report filed by the Inspector-in-Charge, Purba Bardhaman Police Station be retained with the records.

Urgent certified copy of this order, if applied for, be supplied to the parties expeditiously, on compliance of usual legal formalities.

(Amrita Sinha, J.)