

13.12.2024
Sl.No.4
Ct. No.15
S.A.

WPA 28795 of 2024

Santosh Choudhary & Ors.
-vs-
Serampore Municipality & Ors.

Mr. Dhiraj Kumar Trivedi
Mr. S. Chakraborty
Mr. F. Gaffar

...for the petitioners

Mr. Gautam Lahiri
Ms. Sanchayita De

...for the Municipality

Ms. Jayeeta Sinha
Mr. Sandip Mandal

...for the State

Mr. Ashis Kumar Chowdhury
Mr. Rajib Ghosh
Mr. Babhru Bahan Bera
Mr. Avisek Chatterjee
Mr. Puspam Das

...for respondent nos.6 & 7

Respondents No. 6 and 7 filed WPA 13779 of 2023 before this Court, alleging that cracks had developed in the walls of their residential property, which is situated opposite the construction site undertaken by the petitioners.

The writ petition was disposed of by a Co-ordinate Bench of this Court on April 1, 2024. The operative portion of the order is quoted below:

“The Serampore Municipality is directed to cause a spot inspection upon prior notice to the petitioners as well as the private respondents to ascertain as to whether the cracks that have developed in the wall of the petitioners’ premises are on account of the construction being made at the behest of the private respondents.

The Municipality is directed to circulate the spot inspection report and afford an opportunity of hearing to both the

parties to make submission in support of their respective stand.

The Municipality shall decide as to whether any unauthorized construction has been made by the private respondents.

In the event the aforesaid respondent is of the considered opinion that the construction has been made either in violation of the plan sanctioned or devoid the sanction plan, then necessary steps shall be taken to deal with such unauthorized construction, in accordance with law.

The aforesaid respondent shall restrict the consideration of the representation with regard to unauthorized 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.

It is made clear that this Court has not entered into the merits of the claim made by the petitioners and all points are left open to be decided by the aforesaid respondent at the time of consideration of the representation of the petitioners.

Learned advocate appearing for the petitioners is directed to forward a copy of the representation dated March 4, 2023 to the aforesaid respondent at the time of communicating the order of the Court.

The writ petition stands disposed of.

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

In compliance with the above order, the Serampore Municipality issued successive notices to the petitioners as well as to Respondents No. 6 and 7. Both parties appeared before the Board of Councillors and submitted reports from their respective structural engineers. After hearing the parties on several occasions and considering the engineers' reports, the

Board of Councillors was unable to reach a definitive conclusion regarding whether the cracks in the walls of Respondents No. 6 and 7's house were caused by the petitioners' construction. However, the Municipality did determine that unauthorised construction of 4014.75 sq. ft. had been undertaken by the petitioners.

As a result, the Municipality issued an order on October 3, 2024, referring the issue of the cracks to the Director of the Municipal Engineering Directorate. Concerning the unauthorised construction by the petitioners, a notice dated November 6, 2024, was issued directing the petitioners to demolish the unauthorised construction.

Mr. Dhiraj Kumar Trivedi, Senior Advocate for the petitioners, challenges the notice dated November 6, 2024, and the reasoned order dated October 3, 2024. He contends that the Municipality should have issued a notice under Section 218 of the West Bengal Municipal Act, 1993, before directing the petitioners to demolish the unauthorised construction. Since such a notice was not issued, the demolition order could not be sustained.

I am unable to accept this contention. As already mentioned, a Co-ordinate Bench of this Court, by order dated April 1, 2024, directed the Municipality

to address both the issue of cracks in the walls of Respondents No. 6 and 7's property and the issue of unauthorised construction. The Municipality has complied with this order by issuing notice to the petitioners, who participated in the hearings before the Board of Councillors. Therefore, there was no requirement for the Municipality to issue an additional notice under Section 218 of the West Bengal Municipal Act, 1993. The notice under Section 218 is issued to provide an opportunity for the person responsible for the unauthorised construction to be heard. The Board of Councillors passed the demolition order only after allowing the petitioners to present their case. Therefore, there is no necessity for a further notice under Section 218 of the Act of 1993.

The issues of the cracks in Respondents No. 6 and 7's property and the unauthorised construction by the petitioners are distinct and have been appropriately addressed by the Serampore Municipality separately.

However, I note that in directing the petitioners to demolish the unauthorised construction, the Municipality has not specified which part of the construction is to be demolished. Therefore, I direct the Municipality to issue a demolition sketch map along with a infringement statement indicating the

unauthorised construction within seven days from the date of this order.

The petitioners are required to comply with the demolition order in accordance with the aforementioned sketch map and the infringement statement. Upon receipt of the sketch map, the petitioners shall execute the demolition within seven days. If the petitioners fail to demolish the unauthorised construction within the said period, the Municipality will be at liberty to execute the demolition order.

Accordingly, **WPA 28795 of 2024** is disposed of.

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

(Kausik Chanda, J.)