

CALCUTTA HIGH COURT IN THE CIRCUIT BENCH
AT JALPAIGURI

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20.02.2024
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WPA 201 of 2024

Sri Siba Prasad Basu & Ors.
Vs.
The State of West Bengal & Ors.

Mr. Bapi Sarkar
Mr. Tanmoy Sinha Sarkar
...for the petitioner

Mr. Abhilash Mittal
...for the respondent nos. 7 & 8

Mr. Deborshi Dhar
....for the Corporation

Mr. Subir Kumar Saha
Ms. Patralekha Chowdhury
...for the State

Affidavit-of-service filed on behalf of the
petitioner is taken on record.

The writ petition was taken up for consideration
on 13th February, 2024 when this Court adjourned
the hearing since respondent nos. 6 to 8 were not
represented.

Court directed the learned advocate
representing the petitioners to serve notice upon the
private respondents and accordingly notice has been
served upon respondent nos. 7 and 8 and those
respondents are represented today. However,
respondent no. 6 could not be served as it appears
from the tracking report annexed to the affidavit-of-
service filed today wherein it is reported that

“addressee cannot be located”. Since respondent no. 6 received service of notice relating to the writ petition previously as it appears from the affidavit-of-service which was filed on 13th February, 2024 this Court has decided to hear the writ petition on merit.

The learned advocate representing the petitioners who are the flat owners of one “Madhabi Abasan” situates at Road No. 3 Sarada Pally near Tilak Sadhu More, Ward No. 37 within the jurisdiction of Siliguri Municipal Corporation (hereinafter referred to as the “said corporation”), alleges unauthorized construction at the instance of the respondent no. 6. It has also been contended that based on permission accorded by the said corporation G+ 3 storied building has been constructed by the respondent no. 6 and the flats were sold in favour of the petitioners. But subsequently one tin shaded temporary structure was erected at the back side of the aforesaid premises at south west corner. According to the petitioners this erection of tin shade structure is beyond the sanctioned plan accorded by the said corporation. It has also been apprised to this Court that the said structure has been handed over to one “Saradapally Nagarik Samity”. President and

Secretary of the said samity are respondent nos. 7 and 8 in this writ petition.

It has been submitted on behalf of respondent nos. 7 and 8 that the learned advocate requires further instruction from his client which he could not take due to personal difficulty of the respondent no. 8. However, it is submitted that at present they are occupying the said tin shade structure.

Mr. Deborshi Dhar, learned advocate representing the said corporation submits that already a proceeding under Section 287 of the West Bengal Municipal Corporation Act, 2006 has been initiated based on the complaint made by the petitioners. However, the said proceeding has not yet been concluded.

In view of the submissions made on behalf of the parties and specially the submission made on behalf of the said corporation that there is initiation of proceeding under Section 287 the concerned authority of the said corporation is directed to bring the proceeding into logical conclusion within 10 (ten) weeks from the date of communication of this order after granting opportunity of hearing to the petitioners and respondent no. 6.

Since respondent nos. 7 and 8 are the occupiers of unauthorized construction it is settled position of law that they have got no right of

audience before the concerned authority of the said corporation at the time of consideration of the issue in connection with the proceeding initiated under Section 287. In this regard reliance has been placed on the judgment reported in **(2006) 2 Cal LJ 574 (Sanjay Mehta & Ors. Vs. Kolkata Municipal Corporation & Ors.)**

The decision to be taken by the concerned authority of the said corporation shall be communicated to the petitioners as well as respondent no. 6 within 7 (seven) days after taking such decision.

The writ petition stands disposed of.

There shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)