

Item No.13
19.06.2024
Court. No. 2
GB

*CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
APPELLATE JURISDICTION*

W.P.A. 1011 of 2024

Sri Binod Kumar Agarwal
VS
Siliguri Municipal Corporation & Ors.

*Mr. Amales Roy,
Mr. Nigam Mittal,
Mr. Abhilash Mittal,
Ms. Oshmita Mukherjee*

...for the Petitioner.

Mr. Deborshi Dhar

...for the Siliguri Municipal Corporation.

Mr. Rajat Das

...for the Respondent No.5.

1. The petitioner alleges that the respondent no.5 has been raising some unauthorized construction at S.F. Road, Khalpara. Accordingly, a complaint was lodged before the Commissioner, Siliguri Municipal Corporation.
2. It is submitted by Mr. Das, learned advocate for the landlord that the petitioner is a tenant, against whom an eviction suit is pending. In order to prejudice the suit and to create a pressure on the landlord, such false and frivolous complaint has been lodged with the corporation.
3. Mr. Roy, learned advocate for the petitioner submits that the construction is not on the tenanted portion, but on the rest of the premises.

4. These disputed questions cannot be decided in the writ proceeding. Moreover, the issue of unauthorized construction will not have any bearing in the eviction suit.
5. When there is an allegation of unauthorized construction, it is the duty of the corporation to ensure that such complaint is addressed. None can be permitted to raise any construction either without a plan or in deviation of any plan and in contravention to the building rules.
6. This Court has not entered into the merits of the allegations made by the petitioner. The corporation must dispose of the complaint dated March 15, 2024 strictly in accordance with law.
7. While doing so, the following procedure shall be adopted:-
 - a) An inspection of the site shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent no.5. An advance notice of the inspection shall be served upon the petitioner and the respondent no.5. If the parties are not available to accept notice, the same shall be affixed at a conspicuous place in the premises.
 - b) In case, it is found on preliminary inspection that there may be reasons to

believe that the construction is in deviation of the sanction plan or unauthorized and was continuing, the authorities may take interim measures by stopping such construction.

- c) A report of such inspection shall be prepared along with the sketch map, indicating the extent and nature of unauthorized construction, if any.
- d) Such report shall be handed over to the parties. The question of right, title, possession, encroachment and boundary dispute, shall not be decided by the corporation. The only issue to be decided will be whether the construction is in accordance with a sanction or without any sanction.
- e) A hearing shall be given to the petitioner and the respondent no.5. The parties must also be allowed to furnish their written objection/version to the report and adduce oral and documentary evidence in support of their contentions before the competent authority. All points raised by either party, will be decided.
- f) A reasoned order shall be passed and communicated to the parties. On the basis of

what transpires at the hearing and during inspection, the proceedings shall be reached to its logical conclusion in accordance with law.

8. This court has not gone into the merits of the claims of the petitioner and the issues involved shall be decided independently.
9. The entire exercise shall be completed within a period of four months from the date receipt of petitioner's representation.
10. Accordingly, the writ petition is disposed of.
11. However, there shall be no order as to costs.
12. All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)