

11.06.2024
Ct. No. 02
Sl. No.02
Cp

Calcutta High Court
In the Circuit Bench at Jalpaiguri

WPA No. 1131 of 2024

Smt. Bulbul Chakraborty
Vs.
The State of West Bengal & ors.

Mr. Bikramaditya Ghosh
Mr. Ajay Singhal
.....for the petitioner.

Mr. Bhaskar Roy Mahashaya
.....for the respondent no. 5.
Mr. Deborshi Dhar

.....for the Corporation.
Mr. Subir Kumar Saha
Mr. Pradip Sarkar
....for the State.

1. The writ petition arises out of orders of demolition. The first order of demolition is dated May 31, 2024 and during the pendency of the writ petition another order has been passed by the Commissioner, Siliguri Municipal Corporation. The corporation found that the construction by the petitioner of a second storey on her old existing single storeyed building, was without any sanction or approval of a revised plan by the corporation.
2. It was further found that the building was constructed without leaving proper open spaces. A notice dated May

15, 2019 was issued to the petitioner intimating her that the corporation held a site inspection with regard to the construction of the second storey. The petitioner was asked to appear before the Commissioner, Siliguri Municipal Corporation with relevant documents, approvals, building plans etc. to justify such construction. A stop work notice had also been issued to the petitioner. Another notice was issued on August 13, 2019 directing the petitioner to demolish the unauthorized construction.

3. It was further noticed that the construction of the second storeyed building was completed by violating the directions of the corporation. The petitioner failed to produce any sanction with regard to the revised plan for construction of the first floor. No permission could be disclosed. Accordingly, the corporation found that the first floor was raised without any permission. Subsequently, the petitioner issued a legal notice justifying the construction of the first floor on the ground that the sanction had been granted by the Fulbari No. 1 Gram Panchayat sometime in 1993 at a time the area on which the construction was raised, did not fall within the jurisdiction of the corporation. Section 264 of the West Bengal Municipal Corporation Act protected such construction and the plan sanctioned by the Fulbari No. 1 Gram Panchayat was

deemed to have been sanctioned by the corporation. Accordingly, the first floor/second storey of the building was also protected on the basis of the sanction granted by the gram panchayat.

4. Mr. Roy Mahashaya, learned advocate appearing for the respondent no. 5, i.e., for the complainant, submits that the construction of the first floor/ second storey, was made in 2019 when the plan sanctioned by the Fulbari No. 1 Gram Panchayat had lapsed. Under the law, the petitioner was required to pray for further sanction for construction of the first floor, as the West Bengal Municipal Corporation Act had come into force and the area where the construction was carried out was brought within the jurisdiction of the corporation.
5. Mr. Dhar, learned advocate appearing for the corporation, submits that an inspection was held on the site, in presence of the parties. The construction was found to be recent, i.e., in 2019. Accordingly, notices were also issued. He submits that all the reports were also supplied to the petitioner. Mr. Dhar further contends that Section 264 of the West Bengal Municipal Corporation Act, 2006 would not protect the construction as the construction was made in 2019 long after lapse of the sanction granted by the Fulbari No. 1 Gram Panchayat.

6. On the query of the court as to whether the inspection reports were served upon the petitioner or not, Mr. Dhar is unable to answer the same. It is also found that a subsequent order was passed justifying the demolition order passed earlier indicating that even the ground floor was found to be in violation of the sanction granted by the Fulbari No. 1 Gram Panchayat.
7. In my opinion, the petitioner ought to have been supplied with the earlier inspection reports which were relied upon by the authorities. The authorities found that the construction was recent. Moreover, measurements with regard to the violation of the building rules as also the sanction given by the gram panchayat, should have also been taken in the presence of the petitioner and the petitioner ought to have been allowed to respond to the same.
8. Under such circumstances, the writ petition is disposed of with a direction upon the Siliguri Municipal Corporation and its competent officials to inspect the premises in question forthwith. Such inspection shall be held on June 14, 2024 at 12 noon. No further notice is required to be served either on the complainant or on the petitioner.
9. The corporation will conduct the inspection with regard to the age of the first floor construction, as the petitioner has raised a contention that the said

construction was completed long ago. The officials of the corporation inspected the same and found the construction to be recent. However, other violations as stated in the orders impugned, shall also to be detected by measurements, in the presence of the parties.

10. Minutes of such measurement and inspection shall be prepared on the spot and signed by the parties. The same shall be supplied to the petitioner and the complainant. The earlier inspection reports, findings etc., shall also be supplied to the parties. Both the parties shall respond to the same and a final hearing shall be given. The matter shall be disposed of within 10 days from such inspection, upon hearing the parties and upon considering the complaints filed by the respondent No.5, earlier inspection reports, and the present report and the written version. A reasoned order shall be passed and if it is found that the construction of the first floor or any part of the said building was contrary to West Bengal Municipal Corporation Act, 2006 or the Building Rules, necessary orders for demolition shall be passed and the petitioner shall comply with the same.
11. The orders impugned dated May 31, 2024 and June 10, 2024, are set aside. The writ petition is disposed of accordingly.

12. Parties, including the corporation are to act on the server copy of this order. Parties including the corporation are also to act on the learned advocate's communication.

(Shampa Sarkar, J.)