

**Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Jurisdiction**

14 10.9.2024
Sc Ct. no.2

WPA 1364 OF 2024

Pratima Dutta & Anr.

Vs.

The Jalpaiguri Municipality & Ors.

Mr. Abhishek Sarkar

....For the Petitioners

Mr. Pretom Das

....For the Respondent
Nos. 1 & 2

Mr. Bhaskar Roy Mahashaya

...For the Private
Respondent Nos.3, 5 & 6

Affidavit-of-service, filed in Court today, is
taken on record.

The last order dated **September 6, 2024**
speaks for itself.

Pursuant to the direction of this Court, Mr.
Bhaskar Roy Mahashaya, learned advocate
appearing for the private respondent nos. 3, 5 and
6 had served notice upon the other private
respondents. The copy of the notice submitted
today in Court, is taken on record.

On the complaint lodged by the petitioners
alleging unauthorized and illegal construction at
the subject premises at the behest of the private

respondents, the Jalpaiguri Municipality (for short the municipality) issued an order for stop work dated **August 10, 2023, Annexure-P3 at page 22** to the writ petition. The municipality then on **December 20, 2023** issued a notice asking the private respondent no. 3 to demolish the unauthorized construction, **Annexure-P8 at page 28** to the writ petition. Then a hearing notice was issued by the municipality upon the parties concerned on **January 22, 2024, Annexure-P9 at page 29** to the writ petition.

Mr. Abhishek Sarkar, learned advocate appearing for the petitioners submits that, the petitioners though were present but the private respondents were not present in the hearing. Accordingly, the hearing could not take place.

Mr. Bhaskar Roy Mahashaya, learned advocate appearing for the private respondent nos. 3, 5 and 6 submits that, his clients were present on the day when the hearing was fixed.

Mr. Bhaskar Roy Mahashaya, learned advocate for the private respondents today, in course of hearing, submits a bunch of documents dated **June 7, 2023** and **August 14, 2023**, the same are taken on records, which show that, these private respondents have also lodged a complaint

against the petitioners that, the petitioners have demolished the boundary wall of the premises.

Considering the allegation and the counter allegations of the parties this Court directs the respondent no.2 to conduct and conclude the hearing which had already commenced on the basis of the said hearing notice dated **January 22, 2024**. It is further directed that, while conducting the said hearing the respondent no.2 shall also consider the representations of the private respondent nos. 3, 5 and 6 dated **June 7, 2023** and **August 14, 2023**.

By consent of the parties the dates of hearing before the respondent no.2 are fixed on **September 18, 2024 and September 19, 2024 from 12-00 noon** at the office of the respondent no.2.

The respondent no.2 shall then after granting an opportunity of hearing to the petitioners and the private respondents shall dispose of the issue including the said representations of the private respondents dated **June 7, 2023 and August 14, 2023** by passing a reasoned order in accordance with law. The reasoned order shall be passed by the respondent no.2 positively within a period of **two weeks** after conclusion of the hearing. The reasoned order shall be communicated to the

petitioners and all the private respondents positively within a period of **one week** from the date of the said reasoned order to be passed.

The petitioners and all the private respondents shall also be at liberty to collect the reasoned order from the office of the respondent no.2 within the said period.

Depending upon the finding of the respondent no.2 in the said reasoned order, the respondent no.2 and/or the appropriate authority of the municipality shall take all necessary and consequential steps to give effect to the said reasoned order in accordance with law positively within a period of **three weeks** from the date of the said reasoned order to be passed.

It is made clear that, this court has not gone into the merits of the claims and rival claims of the parties and the petitioners and all the private respondents shall be at liberty to urge whatever points they wish to urge by relying upon whatever records and documents they wish to rely upon before the respondent no.2 but the same shall not travel beyond the scope of their respective representations.

It is made clear that, this order shall not create any right or equity either in favour of the

petitioners or in favour of the private respondents, if they do not succeed to their respective claims strictly in accordance with law.

The petitioners shall serve a copy of today's order upon the non-appearing private respondents.

Since affidavits are not called for, the allegations made in the writ petition are deemed not to have been admitted by the respondents.

It is to be noted that, copies of the two representations dated **June 7, 2023 and August 14, 2023** are made over to the learned advocate for the petitioners by Mr. Bhaskar Roy Mahashaya, learned advocate for the private respondent nos. 3, 5 and 6.

With the above observations and directions this writ petition, **WPA 1364 of 2024** stands disposed of, without any order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)