

M/L 106
19.11.2025
sb
Ct.3.

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 1450 of 2024

Kabindra Narayan Roy & Ors.
Versus
The State of West Bengal & Ors.

Mr. Dyutiman Banerjee
Mr. Subhajay Panja
... For the petitioners.

Mr. Gopal Chandra Das
Ms. Ananya Das
... For Tamralipta Municipality.

Mr. Tanmoy Mukherjee
Mr. Biswajit Chowdhury
Mr. Soumik Das
Mr. K. R. Ahmed
... For the respondent nos. 9 to 12

1. Challenging the order dated 4th September, 2023 passed by the Chariman, Tamralipta Municipality in refusing to demolish the unauthorized portion of holding no.416F, Ward No.6, Post Office and Police Station Tamluk under Tamralipta Municipality, the instant writ petition has been filed.

2. The petitioners previously complaining illegal and unauthorized construction by the private respondent nos. 10 to 12 had filed a writ petition which was registered as WPA 7744 of 2023. The Coordinate Bench of this Court by an order dated 4th July, 2023 noting the aforesaid contention of the petitioners and also taking into consideration that the municipality authority was in the

process of consideration of the objection filed by the petitioners had directed the municipal authorities to conclude the proceeding in accordance with law after giving necessary opportunity of hearing to all the necessary parties.

3. By such order it was also provided that in the event any unauthorized construction is detected, necessary steps shall be taken by the municipality to deal with the same.

4. Pursuant to the aforesaid order, Sub-Assistant Engineer of the municipality had carried out an inspection on 14th June, 2023 and able to ascertain that the main structure of the building was very old in age with brick wall, some portion of the building constructed by lime and "*surki mortar*". Some other portions with RCC columns structure at outside of main structure. The aforesaid appears to be offending structure.

5. In furtherance to the above, upon hearing the petitioners the Chariman, Tamralipta had noted that the original property situate at no.6 holding no.416 belonged to one Birendra Narayan Roy. The property is more than 100 years old and subsequent to demise of Birendra Narayan Roy his 7 sons and 3 daughters are residing in the said property in the respective undivided portions under their occupation.

6. According to the order, the petitioners had applied on 7th November, 2022 to the municipal authorities complaining illegal construction on the aforesaid building.

The municipal authority upon noting that the property is un-partitioned and taking note of the overall circumstances was of the view that passing any order of demolition would lead to loss of lives and multiplicity of proceedings had rejected the petitioners' application.

7. Learned advocate for the petitioner would, however, contend that the Chairman of the municipality was under obligation to demolish the offending and illegal construction. The aforesaid amounts to failure on his part to exercise jurisdiction. This Court has the ample power to correct such irregularity and direct the Chairman of Tamralipta Municipality to pass an appropriate order so that illegally constructed portion can be demolished.

8. Mr. Mukherjee, learned advocate representing the private respondents on the other hand would submit that it is an admitted position that the petitioners complained of illegal construction of holding no.416F. By drawing attention of this Court to the complaint made by the petitioners on 28th July, 2023, he would submit that the petitioners themselves had acknowledged the fact that though 7 sons and 2 daughters of Late Birendra Narayan Roy are now enjoying 1/9 undivided share in the premises in question, however, the respective holding numbers have been mutated on the basis of the interest of the respective heirs of Late Birendra Narayan Roy, though actually partition by meets and bounds has not taken place. According to him since there was no scope

for the municipality to identify the holding no.416F, and to prevent loss of life and avoid interference with structural stability of a 100 years old building, the aforesaid order has been passed.

9. Having heard the learned advocates appearing for the respective parties and considering the peculiar facts and considering the age of the building and the likelihood of the loss of lives inter alia including undivided condition of the existing building I find that the Chairman of the municipality had refused to take a decision to demolish the unauthorized portion. Though ordinarily, the petitioners may have right in insisting that the municipality ought to have identified and demolished the illegally constructed portion at holding no.416F, however, taking an overall view of the matter and noting that the property is un-partitioned though the respective portions have been mutated as per the share and interest of the co-sharers, including the age of the building, I am of the view that it shall not be prudent to interfere with the order passed by the Chairman, Tamralipta Municipality especially when the Chairman taking an overall view had refused to take steps for demolition.

10. Accordingly, the writ petition stands dismissed without any order as to costs.

(Raja Basu Chowdhury, J.)