

02.04.2025
Sl. No. 34
Ct No. 3
SG

WPA 23996 of 2023

**Asha Kumari Singh @ Asha Singh
Vs
Champdani Municipality & Ors.**

Mr. Srijan Nayak,
Mrs. Rituparna Maitra,
Mr. Arpan Kundu.
...for the petitioner

Mr. Ayan Banerjee,
Mr. Dhiman Banerjee,
...for municipality

Mr. Rachit Lakhmani,
Ms. Oindrila Ghoshal,
Mr. Sanchayan Sinha.
...for respondent nos. 5 & 6

1. Report of the Special Officer is taken on record.
2. Petitioner has preferred the present writ petition seeking quashing and setting aside of the order dated 31.08.2023.
3. This is the second round of litigation. The Petitioner preferred the writ petition being WPA 5688 of 2023 alleging unauthorized and illegal construction being carried out at the subject premises without leaving mandatory side open space and without valid sanction plan at the instance of the respondent nos. 4, 5 and 6. This Court, vide order dated 01.05.2023, disposed of the said writ petition directing the Champdani Municipality to consider and dispose of the representation made by the petitioner after affording

an opportunity of hearing to all the necessary parties including the petitioner within a period of three months.

4. In compliance of the order dated 01.05.2023 in WPA 5688/2023, the respondent-municipality, after affording an opportunity of personal hearing to the petitioner as well as the other respondents and after conducting inspection with the aid and help of a surveyor deputed by the petitioner, had passed an order dated 31.08.2023. The relevant portion of the said order reads as follows:

- “i) On going construction of the Defendant in Western side of Petitioner leaving 4’-7” space in front, 4’-10” space in back and 5’-10” space in middle from property of the Petitioner.*
- ii) That some portion of the boundary wall of Petitioner situated in the property of defendant.*
- iii) That some portion of existing construction of Petitioner encroached in the property of defendant.*
- iv) That the height of boundary wall of Petitioner is not as per Municipal Act and encroached some portion of land of Defendant.*

.....

It is concluded that the construction is being made as per Plan and according to Building Rules of West Bengal Municipal act.”

5. From the said order it is apparent that it is the conclusion of the respondent municipality that the construction was made as per the sanctioned plan and according to the Rules of West Bengal Municipal Act.

6. Being aggrieved by the said order dated 31.08.2023, the petitioner has preferred the present writ petition.

7. This Court, during the pendency of the present writ petition, vide order dated 03.03.2025 had appointed a Special Officer, Mr. Raja Ghosh, who along with a qualified surveyor was assigned the task of determining whether the mandatory side and rear open space have been maintained by the private respondent nos. 5 and 6 in the construction of the building in dispute and whether there is any deviation from the sanctioned plan.

8. Mr. Ghosh, the Special officer has filed a report indicating that the building is in conformity with the sanctioned plan and there is no illegality in the said construction.

9. In the first round of litigation, the petitioner was granted the liberty to appoint a surveyor of his choice and conduct inspection along with the officials of the Respondent Municipality to ascertain whether there is any discrepancy or not. Petitioner availed the said opportunity and inspected the premises along with the Respondent Municipality officials. After the said inspection, the Champdani Municipality had come to a finding that there is no illegality in the said construction. As per the said inspection report, the

petitioner had encroached upon the private respondent's property and the boundary wall of the petitioner was not in accordance with the building rules.

10. Now, in the second round of litigation, this Court appointed a Special Officer to conduct the inspection with the help of a Surveyor and he also come to the conclusion that the said building is constructed in accordance with the sanctioned building plan.

11. The exercise of ascertaining the illegality and violations were taken up twice and similar finding has been arrived at in both the occasions.

12. In view thereof, this court is of the considered opinion that the premise in question is constructed as per the sanctioned building plan.

13. At this stage, after concluding the dictation of the order, Mr. Nayak, Ld. Counsel for the Petitioner seeks liberty to file exception to the Special Officer's report. This Court feels it is unfair on the part of Ld. Counsel for the Petitioner to seek time for filing the exception to the Special Officer's report after wasting time of the Court for almost 45 minutes. Nevertheless, this Court is not inclined to grant time to the Petitioner for filing the exception to the Special officer's report for the reasons as mentioned below.

It is the allegation of the Petitioner that the premise in question is constructed in violation of the sanction plan. Inspection has been conducted twice, and on both the occasions it was found that there is no deviation from the sanctioned plan. The sanctioned plan is not under challenge before this court. Otherwise also this is not a fact finding exercise where this court can decide the disputed question of facts. In view thereof, this Court is not inclined to grant any opportunity to the Petitioner to file an exception to the report filed by the Special officer. If the Petitioner is aggrieved by the said report, he is at liberty to challenge the same in accordance with law.

14. In view thereof, the present writ petition is dismissed.

15. Since no affidavits have been filed by the respondents, the allegations made in the writ petition shall not be deemed to have been admitted.

16. There shall be no order as to costs.

17. Let urgent Photostat certified copy of this order, if applied for, be supplied to the parties on usual undertaking.

(Gaurang Kanth, J.)