

Court No. 2

23.08.2023

(JPD 1)

(S. Banerjee)

Calcutta High Court
In the Circuit Bench at Jalpairuri
Appellate Side

W. P. No. 1853 of 2023

**Bir Bahadur Blon
Vs.
The State of West Bengal & Ors.**

Mr. Urgen Lama

... for the petitioner

Mr. Subir Kumar Saha, AGP

Mr. Pretom Das

... for the State

Mr. Bikramaditya Ghosh

Mr. Ujjwal Luksom

Mr. Bikash Singha

... for the Kalimpong Municipality

One report has been filed by the Kalimpong Municipality which is signed by the Executive Engineer bearing memo no. 797/K.M. dated 21.08.2023. Here it has not been categorically stated that the whole illegal construction has been demolished.

Learned advocate for the petitioner submits that only a part of the building has been demolished but the whole building is illegal.

In reply thereto the Mr. Ghosh, learned advocate for the Municipality, has stated that that part which has not been touched belongs to the brother of Md. Saifulla, the respondent no. 5 herein.

In reply to a question of the court learned advocate for the Municipality submits that the whole construction is illegal and, therefore, there is no question of any plan issued in any name but the building is being used by the respondent no. 5 and his brother.

This court is not interested to know who is using which part. The only thing which is of some interest is that one illegal construction has been made of which the respondent no. 5 is the owner or, may be, one of the owners. When one illegal construction has been made, there cannot be any right over the said illegal construction of any of the parties, may be they are the joint owners of the land on which the illegal construction has been made.

Therefore, I grant two days' time to the Municipality to start demolition.

This matter is marked 'heard in part' and it will appear before me in the Principal Bench on 30th August, 2023.

However, on the last date of this circuit, i.e., on 25th August, 2023, the Municipality shall file a report stating that the demolition of the other portion, which has not been touched as yet, has started and photographs are to be attached to that

report. Such report is to be produced before this court on 25th August, 2023 at 2 p.m.

However, when the matter will appear in the list on 25th August, 2023, only the report would be accepted and no hearing would be conducted on that date.

Parties are granted liberty to appear via video conferencing before the Principal Bench.

Learned advocate for the petitioner has submitted that the whole construction has been made over his plot of land which he has pleaded in the writ application and in support of his submission he has also enclosed a registered deed of lease (*Kabuliyat*) in the writ application.

Therefore, the stance taken by the Municipality authority is not tenable and for making such submission before this court that the other part of the building belongs to the respondent no. 5, I impose a cost of Rs. 10,000/- upon the Executive Officer of the Municipality which is to be paid from his own pocket and not from the fund of the Municipality and such cost is to be paid to the District Legal Services Authority, Kalimpong by 29th August, 2023.

The photographs produced by the parties and the report as has been indicated above, are kept on record.

List the matter under the heading 'To be mentioned' on 25th August, 2023.

(Abhijit Gangopadhyay, J.)