

M/L 83
04.7.2022
Court No.24
SD

WPA 1559 of 2021

Gulab Chand Kairi & Ors.

Vs.

The South Dum Dum Municipality & Ors.

Mr. Sabyasachi Mukherjee

Ms. Debarati Choudhury

...for the Petitioners.

Ms. Mousumi Bhowal

Mr. Aman Gupta

Mr. Ishan Bhattacharya

...for the Municipality.

Affidavit of service filed by the petitioner in Court today be kept with the records.

The petitioners are aggrieved by the order dated November 13, 2020 passed by the Chairman, Board of Administrators, South Dum Dum Municipality wherein the objection filed by the petitioners regarding unauthorized construction has been found to be not substantiated and the matter has been dropped.

The Municipality directed the person concerned to start construction of the building as per the plan sanctioned by the Municipality.

The specific allegation of the petitioners is that the construction is being made in such a manner that the mandatory side open spaces are not being maintained.

The petitioners made a representation before the South Dum Dum Municipality on 3rd June, 2018. The same has not been considered by the Municipality till date.

The petitioners thereafter through their learned advocate filed another representation in November 2020 and alleges that the same has also not been considered.

Learned advocate representing the Municipality submits that objection filed by the petitioners on October 16, 2020 was duly taken up for consideration and necessary order has been passed.

It appears from the impugned order that the issue of not maintaining the statutory open spaces has not been addressed by the Municipality at all. The petitioners made an earlier representation in the year 2018 followed by another representation in the year 2020 alleging non-maintaining the statutory open spaces.

The instant writ petition is accordingly disposed of by directing the South Dum Dum Municipality being the respondent no.1 to take a decision with regard to the objection filed by the petitioners regarding making construction by not maintaining the statutory open spaces strictly in accordance with law, after giving an opportunity of hearing to all the necessary parties and to pass a reasoned order at the earliest, but positively within a period of twelve weeks from the date of communication of a copy of this order and communicate the same to all the necessary parties including the petitioners immediately thereafter.

In the event the aforesaid respondent is of the considered opinion that the construction has been made either in violation of the plan sanctioned or devoid the

sanction plan, then necessary steps shall be taken to deal with such unauthorized construction, in accordance with law.

The aforesaid respondent shall restrict the consideration of the representation with regard to unauthorized construction only and not enter into or decide any private dispute of the parties regarding right, title and interest in respect of the aforesaid land.

It is made clear that this Court has not entered into the merits of the claim made by the petitioners and all points are left open to be decided by the aforesaid respondent at the time of consideration of the representation of the petitioner.

The petitioners are directed to forward a copy of the representations dated 3rd June, 2018 and October 16, 2020 to the aforesaid respondent at the time of communicating the order of the Court.

The writ petition is disposed of.

Urgent certified photocopy of this order, if applied for, be given to the parties, upon compliance of all formalities, on priority basis.

(Amrita Sinha, J.)