

121 (M/L).
12-07-2022
debajyoti
(Ct. no.24)

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

WPA 7068 of 2021

**Tapas Chand Bandyopadhyay
Vs.
Howrah Municipal Corporation & Ors.**

Mr. Srijib Chakraborty,
Mr. Subhasis Chakraborty,
Mr. Amit Chowdhury,
Ms. Sushmita Kumari Singh

... For the Petitioner.

Mr. Sandipan Banerjee,
Mr. Ankit Sureka,
Mr. Sobhan Majumder

... For the H.M.C.

Mr. S. Bhattacharya,
Ms. Swaralipi Sarkar

... For Respondent No.6.

Affidavit-of-Service filed in Court is taken on record.

The matter relates to Premises No.14/2/17, Sita Nath Bose Lane, Salkia, Howrah, P.S. – Golabari, Ward No.10, under the jurisdiction of the Howrah Municipal Corporation.

According to the petitioner, the private respondent is making unauthorized construction over the said property.

With the allegation of unauthorized construction, the petitioner initially filed a Title Suit in the year 1991 with a prayer for declaring that the defendants are not entitled to make any construction without leaving the side space from the northern boundary wall of the plaintiff's premises. Prayer was

made for restraining the defendants from erecting any unlawful and illegal construction without leaving the side spaces and without any building plan sanctioned by the Corporation.

At the time of hearing of the said suit, it was revealed that the Howrah Municipal Corporation did, indeed, sanction a plan for making construction over the said premises in favour of the private respondent herein.

The said Title Suit was, thereafter, withdrawn by the plaintiff, that is, the petitioner herein.

The petitioner filed an application under Article 226 of the Constitution of India challenging the impugned action on the part of the Corporation to sanction the building plan in contravention of the provisions as laid down in law. An order of injunction was passed in the said writ petition restraining the private respondent from making any construction thereon. The said writ petition being W.P. No.7946 (W) of 2001 stood dismissed for default on 08th April, 2016.

The petitioner presently alleges that the private respondent, after the lockdown period, again started making unauthorized construction and the petitioner was compelled to file complaints before the Golabari Police Station. A reminder was sent to the Golabari Police Station intimating about the illegal construction.

The grievance of the petitioner is that no steps have been taken by the Howrah Municipal Corporation to consider and dispose of the representation objecting

to the unauthorized construction submitted in January, 2021.

On a perusal of the averments made in the writ petition and the complaint lodged by the petitioner against the unauthorized construction, it appears that the details of the unauthorized construction which the private respondent is allegedly making are not specified. The representation is a general statement about the unauthorized construction without the details thereof. In the absence of proper details it will not be possible for the men and agents of the Howrah Municipal Corporation to ascertain the illegal construction that is alleged to have been made.

Fact remains that a plan was sanctioned in favour of the private respondent way back in the year 1991-92. The learned advocate representing the private respondents submits that construction was made in accordance with the said sanctioned plan.

At this stage, if the issue of unauthorized construction is to be reopened, then specific details of the said unauthorized construction ought to be submitted before the Corporation for taking necessary action in the matter. The necessary details are missing.

In view of the above, no relief can be granted to the writ petitioner in the instant writ petition. The writ petition stands dismissed.

However, the petitioner will be at liberty to make a comprehensive representation before the Corporation highlighting the details of the alleged illegal construction being made by the private respondents.

In the event, such a representation is made, the same shall be considered by the appropriate authority of the Corporation strictly in accordance with law.

Affidavits not having been called for, the allegations in the writ petition shall be deemed not to have been admitted by the respondents.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance of necessary formalities.

(Amrita Sinha, J.)