

Item No. 114(ML)

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

12.09.2022
Ct-24

WPA 12509 of 2021

Mahatirtham

v.

The Municipal Commissioner, KMC & Ors.

Mr. Mrinal Kanti Mukherjee
... for the petitioner.

Mr. Naba Kumar Das
Mr. Subhabrata Das
... for the State.

Mr. Biswajit Mukherjee
Mr. Dwijadas Chakraborty
... for KMC.

The petitioner complains of illegal and unauthorized pacca permanent construction made by the private respondent on Plot No. 417, Mouza-Madurdaha, J.L. No. 12, Police Station –Anandapur, Ward No. 108 under the jurisdiction of the Kolkata Municipal Corporation.

According to the petitioner, the private respondent started making construction on the said plot of land in July 2021. Despite representation made on behalf of the petitioner through the learned advocate, the Kolkata Municipal Corporation did not take any steps to stop the unauthorized construction.

It has been submitted that the said construction has been made without obtaining any sanctioned plan from the Kolkata Municipal Corporation.

None appears on behalf of the private respondent. Affidavit-of-service filed in Court today is taken on record.

In view of the order that I intend to pass, none of the parties will be prejudiced, if the writ petition is disposed of in the following manner.

As it appears that the representation of the petitioner objecting to the illegal and unauthorized construction is pending consideration at the end of the respondent authorities, no useful purpose will be served by keeping the writ petition pending.

The writ petition is accordingly disposed of by directing the respondent no. 2 being the Executive Engineer, Building Department, Borough-XII to consider and dispose of the representation made by the petitioner strictly in accordance with law, after giving an opportunity of hearing to all the necessary parties including the petitioner within a period of three months from the date of communication of a copy of this order. The said respondent shall pass a reasoned order and communicate the same to all the necessary parties including the petitioner 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 petitioner 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 petitioner is directed to forward a copy of the representation dated February 5, 2021 to the aforesaid respondent at the time of communicating the order of the Court.

The report filed by the Officer-in-Charge, Anandapur Police Station dated August 25, 2021 be retained with the records.

The writ petition stands disposed of.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

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(Amrita Sinha, J.)