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06.09.2022
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**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A. 12964 of 2022

**Sri Amit Kumar Rai
-versus
The Howrah Municipal Corporation & Ors.**

**Mr. Animesh Paul,
Mr. Chandan Mondal.
...For the Petitioner.**

**Mr. Sandipan Banerjee,
Mr. Sobhan Majumder,
Mr. Ankit Sureka.
...For HMC.**

**Mr. Lalit Mohan Mahata,
Mr. Prasanta Behari Mahata.
...For the State.**

Affidavit-of-service filed in Court today is taken on record.

None appears on behalf of the private respondents in spite of service.

The petitioner alleges illegal and unauthorized construction at the instance of the respondent Nos. 5, 6 and 7.

Copy of the writ petition has been received by the respondent No.6, Neeraj Gond.

There is no proof of service of the writ petition upon the respondent Nos. 5 and 7.

Learned advocate appearing for the petitioner submits that the respondent Nos. 5, 6 and 7 are jointly making unauthorized construction at the Premises No. 25/26, Rose Mary Lane, P.O. and P.S. – Golabari.

The petitioner alleges that the representation filed before the Howrah Municipal Corporation in June 2022 has not been taken up for consideration till date.

Learned advocate appearing for the Howrah Municipal Corporation submits that the proceeding under Section 177A of the Howrah Municipal Corporation Act has been registered against the person responsible for making construction.

Learned advocate appearing for the Officer-in-Charge of Golabari Police Station has filed a report which reveals that on the basis of the written complaint filed by the petitioner, Golabari PS Case No. 189 of 2022 dated 19th April, 2022 under Sections 288/336 IPC and 177A Howrah Municipal Corporation Act has been registered against the developer and investigation of the case is not progress.

In view of the order that I propose 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.3 being the Assistant Engineer, Building Department 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 22nd June, 2022 to the aforesaid respondent at the time of communicating the order of the Court.

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.

(Amrita Sinha, J.)