

Sl. No.5
20.09.2022

Court No.24
B.M.

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

W.P.A 15419 of 2021

Anita Lahiri
Versus
The State of West Bengal & Ors.

Mr. Manas Kumar Das

... for the Petitioner

Mr. Arindam Das

Mr. Atanu Banerjee

Ms. Rumeli Sarkar

... for the Berhampore Municipality

Mr. Partha Pratim Roy

Mr. Sarbananda Sanyal

Ms. Poulami chakraborty

... for the private respondent no.6

The petitioner alleges illegal and unauthorised construction at the instance of the respondent no.6. The petitioner submits that the respondent no.6 is making construction over an undivided plot of land.

The respondent no.6 purchased undivided share from the co-sharer of the property and is making construction in such a manner that the easementary right of the petitioner is being infringed. The petitioner contends that construction is being made without leaving the statutory side open spaces.

A representation was filed before the Chairperson of the Municipality on 13th July, 2021. The petitioner

complains that the same has not been taken up for consideration till date.

Learned advocate representing the respondent no.6 submits that construction is being made in accordance with plan that has been sanctioned by the Municipality.

It appears from the submission made on behalf of the parties that the plot in question where the construction is being made is an undivided joint property. There is no demarcation of the share of the co-sharer. In a joint property each and every co-sharer has a right in each and every inch of the property. The private respondent claims to make construction on the portion of the land, possession of which is with him.

It is made clear that any construction that is being made will not create any right, title or equity in favour of either of the parties. The share of the parties shall be decided in the partition suit that is pending.

The present writ petition is being disposed of only to deal with the allegation of the petitioner regarding unauthorised construction.

The Executive Officer of the Berhampore Municipality is directed to consider the representation filed by the petitioner on 13th July, 2021 strictly in accordance with law after giving reasonable opportunity of hearing to all the necessary parties and thereafter take a decision in the matter. A spot inspection may be

conducted with prior notice to the parties to ascertain the nature of construction that is being made.

The aforesaid respondent is directed to consider and dispose of the representation made by the petitioners strictly in accordance with law, after giving an opportunity of hearing to all the necessary parties including the petitioner within a period of 12 weeks 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 unauthorised 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 13th July, 2021 to the aforesaid respondent at the time of communicating the order of the Court.

Writ petition stands disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties on completion of usual formalities.

(Amrita Sinha, J.)