

52
07.09.2022
d.p.

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

W.P.A. 15638 of 2022

**Mr. Arup Roy Chowdhury
-versus
The Kolkata Municipal Corporation & Ors.**

**Mr. Subhankar Das,
Mr. Bikram Sarkar.
...For the Petitioner.**

**Mr. A.N. Bhattacharyya,
Ms. Sayani Das.
...For the Respondent No.12.**

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

None appears on behalf of the Kolkata Municipal Corporation in spite of service.

Leave is granted to the learned advocate-on-record of the petitioner to correct the father's name of the respondent No.12 in the cause title of the writ petition.

The petitioner alleges illegal and unauthorized construction at the instance of the respondent No.12 in the premises No.69, Roy Bahadur Road.

Learned advocate appearing for the petitioner relies upon the order dated 25th August, 2021 passed by the Learned Civil Judge, Junior Division, 5th Court at Alipore in Title Suit No. 993 of 2021.

By the said order, the Learned Court below directed to the parties to maintain status quo in respect of the nature, character and the possession of the suit property.

Learned advocate submits that a representation was filed before the Kolkata Municipal Corporation in the month of June 2022 alleging that the construction was being made at the instance of the private respondent without keeping any mandatory side open spaces.

Further allegation of the petitioner in the representation is that the plan was sanctioned in favour of the private respondent upon gross misrepresentation.

The petitioner alleges that the said representation is pending consideration till date.

Learned advocate appearing for the private respondent denies the allegation of the petitioner.

It has been submitted that the private respondent is making construction on the premises No. 69, Roy Bahadur Road and there is no interim order pending in respect of the said premises.

It has been submitted that the construction is being made strictly in accordance with the plan that has been sanctioned by the Kolkata Municipal Corporation.

In the absence of any representation from the Kolkata Municipal Corporation, the Court is not in a position to decide the issue conclusively.

The representation filed by the petitioner is pending consideration.

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.10 being the Executive Engineer (Civil), Borough XIII Committee, Kolkata Municipal Corporation 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 23rd 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.)