

Item No. 100

31.10.2022
Ct-24

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 19830 of 2022
Shri Jainath Shaw

v.

The Kolkata Municipal Corporation & Ors.

Mr. Sujit Kumar Maurya
Mr. Sushil Kumar Maurya
... for the petitioner.

Mr. Prasanta Kumar Giri
Ms. Krishna Pala
... for the State.

Mr. Ayan Banerjee
Ms. Debasree Dhamali
Ms. Riya Ghosh
... for the respondent no. 12.

The petitioner claims to be one of the thika tenants of the Premises No. 48/1/H/6 Karl Marx Sarani, Police Station-South Port, Kolkata-700023.

He alleges that the respondent nos. 8 & 9 have made construction thereon without obtaining any permission/sanction from the Kolkata Municipal Corporation and without taking any permission from the Thika Controller.

A complaint was filed before the Kolkata Municipal Corporation through the learned advocate in August 2022. The same is yet to be considered.

The affidavit-of-service filed in Court today does not show service upon the respondent no. 9 against whom

allegation has been made for making unauthorized construction. The track report of delivery shows that copy of the writ petition has been served upon respondent no. 8 who is also responsible for making illegal construction.

None appears on behalf of the Kolkata Municipal Corporation despite service.

The report filed by the Officer-in-Charge, South Port Police Station dated September 7, 2022 mentions that a physical inspection was conducted at the site when it was revealed that a G+4 storied building have been constructed at the said premises and the construction work was completed in the year 2020 and most of the floors have been occupied by the dwellers. No construction is going at present.

The report of the police does not disclose as to whether the construction work was made in accordance with the plan sanctioned by the Kolkata Municipal Corporation. In the absence of the learned advocate representing the Kolkata Municipal Corporation the Court is not in a position to decide the issue conclusively.

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 to consider and dispose of the representation made on behalf of 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 August 10, 2022 to the aforesaid respondent at the time of communicating the order of the Court.

The writ petition stands disposed of.

Report filed by the Officer-in-Charge, South Port Police Station be kept on record.

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.)