

23
07.11.2022
d.p.

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

W.P.A 20143 of 2022

**Mr. Mihir Saha
-versus
The State of West Bengal & Ors.**

**Mr. Soumyajit Bhatta.
...For the Petitioner.**

**Mr. Arijit Dey.
...For the Municipality.**

**Ms. Susmita Saha Dutta,
Mr. Niladri Saha.
...For the Respondent
Nos.4 and 8.**

**Mr. Subhabrata Das.
...For the State.**

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

The un-served envelope upon the respondent No.4 filed in Court today is taken on record.

The report filed by the Inspector-in-Charge, Baranagar Police Station dated 16th September, 2022 in Court today is also taken on record.

The petitioner complains of illegal and unauthorized construction at 437, Netaji Colony, Ward No. 22, Kolkata-700090 under the jurisdiction of Baranagar Municipality.

The petitioner complains that the construction is being made illegally in violation of the building rules by not maintaining the mandatory side open spaces.

The objection filed by the petitioner before the Municipality in August 2022 has not been answered.

Learned advocate appearing for the respondent nos. 4 and 8 denies the contention of the petitioner and submits, upon instructions, that the construction is being made in accordance with the plan sanctioned.

It has further been submitted that all the owners of the premises in question have not been impleaded as party respondents and the writ petition is liable to be dismissed on the ground of non-joinder of necessary parties.

Learned advocate appearing for the Municipality is yet to receive any instruction in the matter.

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 nos. 2 and 3 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 29th August, 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.)