

21.11.2022
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AN/Ct. No.24

WPA 22092 of 2022

**Subir Kumar Datta
versus
The State of West Bengal & ors.**

Mr. Sankar Biswas
Mr. Debnath Mahata

... for the petitioner

Mr. Mrinal Kanti Das
Mr. Subhabrata Das
Mr. Kartick Kumar Goyal

... for North Barrackpore
Municipality

Mr. Wasim Ahmed
Mr. Sk. Md. Masud

... for the State

The petitioner alleges illegal and unauthorized construction at the instance of respondent no. 5. None appears on behalf of respondent no. 5 despite service. Affidavit of service filed in court is taken on record.

The petitioner refers to an order passed by the learned Civil Judge, Senior Division, 3rd Court, Barasat, North 24 Parganas on 03.06.2022 in Title Suit No. 496/2022. The learned court below was pleased to direct the parties to maintain status quo with respect to possession and nature and character of the suit property.

The petitioner submits that despite the order of status quo, the private respondent is merrily carrying on with the construction work without obtaining any

permission/sanction from North Barrackpore Municipality. The petitioner relies upon a communication made by the Public Information Officer of North Barrackpore Municipality that the construction over holding no. 605 (new) of Ward no. 3 is being carried out without obtaining appropriate sanction plan from the local body and no action has been taken by the local body till date.

The petitioner filed representation before the Chairman of the Municipality in September, 2020 and alleges that the same has not been taken up for consideration till date.

The petitioner relies upon an unreported judgment passed by this court on 11.05.2018 in W.P. 5279(W) of 2018 in the matter of Smt. Purnima Devi vs. State of West Bengal & Ors. wherein the Court observed that the pendency of the Suit for partition does not mean that a party to such Suit has a license to construct without due sanction from the Municipality.

Learned counsel representing the Municipality submits that the representation alleging unauthorized construction will be considered in accordance with law.

The writ petition is accordingly disposed of by directing the Board of Councillors, North Barrackpore Municipality to consider and dispose of the objection made by the petitioner before the Chairman on 13.09.2022 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 13.09.2022 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.)