

27
29.11.2022
d.p.

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

W.P.A. 24549 of 2022

**Arif Hussain
-versus
The State of West Bengal & Ors.**

**Mr. Daanish Haque,
Mr. Abdul Zahid,
Mr. Siraj Munir.
...For the Petitioner.**

**Mr. Jahar Datta,
Mr. Bipin Ghosh.
...For the State.**

**Mr. Barin Banerjee,
Ms. Sima Chakraborty.
...For KMC.**

**Md. Salahwddin,
Md. Ahsanuzzaman,
Md. Raziuddin.
...For the Board of Waqf.**

**Mr. Subir Sanyal,
Mr. Sumitava Chakraborty.
...For the Respondent
Nos. 9 and 10.**

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

The matter relates to unauthorized construction
at Premises No. 22A, Ahiripukur Road, Kolkata-
700019, Ward No.-69, Borough-VIII under the
jurisdiction of the Kolkata Municipal Corporation.

According to the petitioner, unauthorized construction is being made thereat at the instance of the respondent nos. 9 and 10.

Learned advocate appearing for the respondent nos. 9 and 10 denies the allegation of the petitioner and submits that no unauthorized construction has been made. The construction has been made in accordance with the plan sanctioned by the Kolkata Municipal Corporation.

The plan in question was valid till 13th November, 2022 and thereafter application has been made for revalidation and the same is pending consideration before the Corporation.

Learned advocate appearing for the Board of Waqf submits that the writ petition is not maintainable and any dispute with regard to the waqf property ought not to be entertained by this Court under Article 226 of the Constitution of India.

Learned advocate appearing for the Kolkata Municipal Corporation has produced a report before this Court signed by the Assistant Engineer and the Executive Engineer (Civil)/Building Borough-VIII on 19th November, 2022 wherein it is mentioned that a building permit was sanctioned for addition of one floor in portion on the roof of an existing G+3 storied residential building. The G+3 storied building was constructed on the basis of another sanctioned plan.

On receiving the complaint, the department inspected the site and found that the person responsible constructed R.C.C. frame structure with

roof slab on the roof of the existing G+3 storied building, preparatory to construct the floor, covering sanctioned open terrace portion on the northern portion which is in deviation from the sanctioned plan.

The plan has lapsed on 14th November, 2022. Stop work notice under Section 401 of the Kolkata Municipal Corporation Act, 1980 has been served upon the person responsible on 18th November, 2022 with intimation to the Karaya Police Station on 19th November, 2022. Further departmental action will be taken in accordance with the Kolkata Municipal Corporation Act, 1980.

Upon hearing the submissions made on behalf of all the parties, the Court makes it very clear that the present issue is only with regard to unauthorized construction. The issue of title, waqf dispute etc. is not decided by this Court.

The engineers of the Corporation has placed on record that steps will be taken to deal with the unauthorized construction, as detected.

Accordingly, the present writ petition is disposed of by directing the Executive Engineer (Civil)/Building Borough-VIII to take steps to deal with the unauthorized construction in accordance with law, after giving a reasonable opportunity of hearing to all the necessary parties and pass a reasoned order at the earliest, but positively within a period of twelve weeks from the date of communication of a copy of this order.

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.)