

Item No. 15

06.12.2022
Ct-24

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 26415 of 2022
Smt. Ajita Mukherjee & Ors.

v.

The State of West Bengal & Ors.

Mr. Uday Sankar Chattopadhyay
Mr. Suman Sankar Chatterjee
Mr. Santanu Maji
Mr. Pronoy Basak
... for the petitioners.

Mr. Uttam Kumar De
Ms. Writi De
Ms. Riya De
... for the private respondent nos. 8 & 9.

Ms. Jayeeta Sinha
Mr. Sandip Mandal
... for the State respondents.

The petitioners allege illegal and unauthorized construction at the instance of the private respondents over Premises Nos. 43C and 43/1A, Sankar Halder Lane, Police Station-Jorabagan, Kolkata-700005, Ward No. 19, Borough-II under the jurisdiction of the Kolkata Municipal Corporation. Both the premises are adjoining each other and the parties claim to be the joint owners of the same. A suit for partition is pending consideration in the learned Court below.

The petitioners rely upon information provided under the Right to Information Act intimating the petitioner that as per available office records of the department, no sanctioned plan has been found.

The petitioners filed representation before the Executive Engineer of the Borough-II complaining unauthorized construction at the instance of the private respondents.

It has been submitted that the said representation is yet to be considered.

Learned advocate representing the private respondents denies the allegations of the petitioners. It has been submitted that the building in question is more than 200 years old and in a very dilapidated and inhabitable condition. The private respondents made the necessary repairs to make the premises habitable.

It has been submitted that the learned Court below permitted the private respondents, being the defendants in the suit, to carry out the necessary repairs.

None appears on behalf of the Kolkata Municipal Corporation.

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. 5 to consider and dispose of the representation made by the petitioners strictly in accordance with law, after giving an opportunity of hearing to all the necessary parties including the petitioners 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 petitioners 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 petitioners and all points are left open to be decided by the aforesaid respondent at the time of consideration of the representation of the petitioners.

The petitioners are directed to forward a copy of the representation dated March 15, 2021 to the aforesaid respondent at the time of communicating the order of the Court.

The writ petition stands disposed of.

Affidavit-of-service filed in Court today is taken 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.)