

OD-3

ORDER SHEET

WPO/357/2020

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

MD. MOSTAFA HALDER
Versus
THE STATE OF WEST BENGAL AND ORS.

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date : 21st February, 2022.

[Via Video Conference]

Appearance:
Mr. Amal Baran Chatterjee, Adv.
Mr. Golam Mohammad, Adv.
Mr. S.M. Burhanuddin, Adv.
For the petitioner.

Mr. Ayan Banerjee, Adv.
Mr. Suman Banerjee, Adv.
For the respondent nos. 15 and 16.

Mr. Arijit Bhoumik, Adv.
Ms. Debasree Dhamali, Adv.
For the respondent nos. 9 to 14.

Ms. Tanushree Dasgupta, Adv.
For the K.M.C.

The Court :- The petitioner alleges that the respondent nos. 9 to 16 have raised some unauthorized construction on premises No. U-128, S A Farooque Road, pertaining to Ward No. 139, Borough-XV of the Kolkata Municipal Corporation.

It is the contention of the petitioner that the said respondents have raised a construction by violating the Rules and the mandatory side

space had not been kept. It is further submitted that the projections have encroached over a common passage used by the parties.

Mr. Banerjee, learned Advocate appearing on behalf of the respondent nos. 15 and 16, the developer, submits that on permission from the owners, the construction has been made. The construction is in accordance with the plan. There has been no deviation from the plan and the building rules have been followed. Mr. Banerjee further submits that a civil suit is pending on the self same cause of action being Title Suit No. 03/21 before the learned Civil Judge (Senior Division), 3rd Court at Alipore. That the order of injunction passed earlier in respect of the said passage, has been vacated. He submits that the writ petition should not be heard in view of the pendency of the civil suit.

Ms. Dasgupta, learned Advocate appearing on behalf of the Corporation, submits that notices have been issued by the Corporation for holding an inspection of the premises in question and the date of such inspection has been fixed on March 3, 2022 at 3 p.m.

Heard the parties.

The adjudication of the points in issue in the civil suit and in a proceeding before the competent authority of the Kolkata Municipal Corporation, are distinct and separate. The Corporation has only to determine as to whether there has been any violation and infraction of the building rules or the building plan. The other issues with regard to the title, possession and encroachment are to be determined by the Civil Court.

Under such circumstances, as the Corporation has already taken cognizance of the complaint of the petitioner and a date has been fixed for inspection, such inspection shall be held in accordance with law, upon notice to all the parties.

This order shall not have any influence in the civil proceedings and the proceedings shall continue before the learned Civil Court in accordance with the business of the Court.

Under such circumstances, the writ petition is disposed of with the following directions:

- a) The Corporation shall cause an inspection of the premises in question upon notice to the parties. Upon inspection, the Corporation may adopt appropriate interim measures as may be, prima facie, necessary.
- b) Upon holding the inspection, the Corporation authorities shall prepare an inspection report with a sketch map, indicating the nature and extent of the unauthorized construction. Copies of the inspection report and sketch map shall be handed over to the parties.
- c) Parties will be entitled to file their written objection/written versions to the said report and also adduce oral and documentary evidence in support of their contentions.
- d) A reasoned order shall be passed and communicated to the parties upon giving an opportunity of hearing to all. The entire

issue shall be reached to its logical conclusion on the basis of what transpires at the hearing.

It is made clear that this Court has not gone into the merits of the claim of the petitioner.

The entire exercise should be completed within a period of six months from the date of communication of this order.

All parties are to act on the basis of the server copy of this order.

(SHAMPA SARKAR, J)

snn.