

Item No.7

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

04.04.2023
Ct-24

WPA 141 of 2023
Sree Sree Iswar Sridhar Jew Thakur
v.
The Kolkata Municipal Corporation & Ors.

Mr. Ovik Sengupta
Mr. Satyajit Senapati
Mr. Rahul Nag
... for the petitioner.

Mr. Gausul Alam
Md. Yusuf Ali
... for the State.

Mr. Debjit Mukherjee
Mr. Santanu Chatterjee
... for KMC.

Mr. Uday Sankar Chattopadhyay
Mr. Santanu Majhi
Ms. Snigdha Saha
Ms. Rajarshree Tah
... for the respondent nos. 8 & 9.

Mr. Ghanshyam Pandey
... for the respondent no. 10.

The petitioner is a debattar property allegedly represented by three shebait viz. Subhabrata Dey Biswas, Malay Dey Biswas and Tathagata Dey Biswas.

The grievance of the petitioner is that unauthorized construction is going on at premises no. B/18/H/14, B/18/H/9, B/18/H/2 and 18/H/8/1, Barwaritala Road, Ward No. 34, Borough-III under the jurisdiction of Kolkata Municipal Corporation.

The petitioner complains that legal representation filed before the Kolkata Municipal Corporation is yet to be answered.

Learned advocate representing the Kolkata Municipal Corporation submits, upon instruction, from the Executive Engineer (C), Building Department, Borough-III, Kolkata Municipal Corporation that in respect of the premises no. B/18/H/14 unauthorized construction was detected and a portion of the unauthorized construction was demolished on September 13, 2019.

In respect of premises no. B/18/H/9 unauthorized construction has been detected and stop work notice has been issued with intimation to the local police station and lodging of FIR before the police station in January 2016.

No unauthorized construction was detected at premises no. B/18/H/2 and 18/H/8/1.

Learned advocate representing the private respondents mentions that the constructions are long over and the private respondents are residing at the subject premises.

It has been submitted that an earlier writ petition filed by the petitioner being WPA No. 15239 of 2018 on the selfsame cause of action stood dismissed for default on October 3, 2018. Without taking any steps for restoration, the present writ petition has been filed on the selfsame cause of action.

It appears that though an earlier writ petition was filed but the same has not been pressed for reasons best

known to the petitioner. The issue in the said writ petition was not adjudicated by the Court.

The instant writ petition has been filed alleging non-consideration of the legal representation filed in August 2022. The instruction forwarded by the Executive Engineer of the concerned borough mentions about unauthorized construction.

In view of the above, the respondent no. 6 being the Executive Engineer of Borough-III is directed to consider and decide the representation filed on behalf of the petitioner by causing a spot inspection upon prior notice to all the parties to ascertain the allegation of unauthorized construction. In the event unauthorized construction is detected, then an opportunity of hearing shall be given to all the necessary parties and a final order be passed in the matter.

The Executive Engineer shall ensure that the entire exercise is concluded at the earliest but positively within a period of sixteen weeks from the date of communication of a copy of this order.

A reasoned order shall be passed and communicated to all the parties. If the allegation of unauthorized construction is found to be true, then necessary consequential steps shall be taken to deal with the same in accordance with law.

Learned advocate for the petitioner is directed to forward a copy of the legal representation dated August 5, 2022 to the aforesaid respondent at the time of communicating the order of this Court.

The Executive Engineer is restrained from entering into any private dispute in between the parties and will

restrict consideration only with regard to unauthorized construction at the subject premises.

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.

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(Amrita Sinha, J.)