

02.05.2023
Item No. 13
Court No. 24
AGM

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

WPA 540 of 2023

**Tuhin Ghosh & Anr.
Vs
The State of West Bengal & Ors.**

**Mr. Sumitava Chakraborty
... for the Petitioners.**

**Mr. Naba Kumar Das
Mr. Subhabrata Das
... For the State.**

**Mr. Subhasis Bandyopadhyay
Mr. Priyabrata Batabyal
... For the Burdwan Municipality.**

**Ms. Pranati Das
... For the respondent no. 9.**

Affidavit-of-service filed in Court today be kept with the record.

The petitioners complain of illegal and unauthorised construction at holding no. 40, Badamtala, Chandmari, 2nd Bye Lane, Aurobinda Stadium North, Ward No. 7 under jurisdiction of Burdwan Municipality.

The petitioners complain that construction is being made without any sanction plan and without leaving the mandatory side open spaces.

Objection filed by the petitioners in August, 2022 is yet to be considered and disposed of.

Learned advocate representing the private respondents submits, upon instruction that, the

construction was made long ago in accordance with the plan sanctioned by the Municipality.

Learned advocate representing the Burdwan Municipality submits, upon instruction that, on receipt of the complaint from the petitioners, the Municipality went for an inspection but the proceeding could not be concluded due to non-cooperation of the private respondents.

As it appears that a complaint alleging unauthorised construction has been made before the Municipality, it is for the said authority to proceed with the same. The Municipality ought not to keep the issue pending on account of non-cooperation on the part of the private respondents.

It is for the Municipality to enquire and ascertain as to whether the allegation of the petitioners is correct or not.

The representation filed by the petitioners is liable to be considered and disposed of by the Municipality.

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, Board of Councillors, Burdwan Municipality 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.

The learned advocate for the petitioners is directed to forward a copy of the representation dated 4th August, 2022 to the aforesaid respondent at the time of communicating the order of the Court.

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.)