

ML 256
02.02.2023
d.p.

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

W.P.A 587 of 2022

**Dev Kumar Sharma
-versus
The State of West Bengal & Ors.**

**Mr. Ayan Banerjee,
Ms. Debasree Dhamali.
...For the State.**

**Mr. Sandipan Banerjee,
Mr. Ankit Sureka,
Mr. Sobhan Majumder.
...For HMC.**

**Mr. Apurba Kumar Ghosh.
...For the Respondent No.13.**

Learned advocate for the respondent No.13 submits that he has filed Vakalatnama in the department vide filing No. A-1479 dated 31st January, 2022. The department is directed to tag the same with the records.

The petitioner claims to be a practicing advocate. He has filed the writ petition in person.

The petitioner is absent at the time of call.

It appears from the averments made in the writ petition and the documents annexed thereto that the petitioner complains of illegal and unauthorized construction at premises no. 68, Ram Lochan Shire

Street, P.S.-Belur presently under the jurisdiction of Bally Municipality.

The petitioner complains that the private respondents constructed G+5 storied structure by obtaining sanction for construction of G+3 storied structure.

Complaint filed by the petitioner before the Howrah Municipal Corporation is pending consideration till date.

Learned advocate appearing for the Bally Municipality submits that the sanction was granted for making construction of G+3 storied building by the Howrah Municipal Corporation. The private respondents constructed G+5 storied structure without obtaining any permission either from the Howrah Municipal Corporation or from the Bally Municipality.

Learned advocate appearing for the respondent No.13 being the developer of the property admits that G+5 storied structure has been constructed and it has been submitted that the said structure has been assessed by the Bally Municipality.

The private respondent submits that the Municipality is accepting the tax in respect of the structure already constructed.

It has been contended that as-made plan submitted by the private respondent is pending consideration at the end of the Howrah Municipal Corporation.

It has been submitted that prior to the transfer of jurisdiction from the Howrah Municipal Corporation to the Bally Municipality, a hearing was conducted by the Howrah Municipal Corporation, but no final order has been passed.

Learned advocate appearing for the Howrah Municipal Corporation submits that presently the property in question falls under the jurisdiction of Bally Municipality and all records in connection with the subject property have been transferred to the Bally Municipality. Presently, the Bally Municipality is the competent authority to deal with the matter.

It appears from the submissions made on behalf of all the parties that admittedly sanction was obtained for construction of G+3 storied structure. The private respondent constructed two additional floors without obtaining any permission or sanction from the concerned authority.

According to the provisions of law, construction is to be made only after obtaining sanction and not prior thereto.

The submission of the private respondent that the as-made plan is pending consideration and that the Bally Municipality accepted taxes in respect of the entire construction, does not regularize the construction made without any sanction plan.

If the aforesaid contention of the private respondent is to be accepted, then henceforth the builders will make construction prior to obtaining any sanction and thereafter approach the sanctioning authority for regularization of the construction made.

The aforesaid contention is absolutely contrary to the municipal laws. The rule of law cannot be maintained if the aforesaid proposition is accepted.

As the Bally Municipality has already detected unauthorized construction, accordingly, the Municipality is directed to take necessary steps to deal with the unauthorized construction and demolish the same in accordance with law, after giving a reasonable opportunity of hearing to all the necessary parties.

The Bally Municipality shall act 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.)