

27.03.2023
Item No. 26
Court No. 24
AGM

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

W.P.A. 838 of 2023

**Kalpana Bibi & Ors.
-versus
The State of West Bengal & Ors.**

**Mr. Wasim Ahmed,
Md. Kashif,
Mr. Pritam Chakraborty,
...For the Petitioners.**

**Mr. Gour Baran Sau,
... For the respondent nos. 9 to 11.**

**Mr. Rabindra Narayan Dutta,
Mr. Rabindra Nath Pal, ... For the State.**

**Mr. Gopal Chandra Das,
Mr. Rudranil De,
...For KMC.**

The petitioners allege illegal and unauthorised construction at premises No. 96F, Dilkhusha Street, P.S. Karaya, Ward No. 064, Borough VII, Kolkata- 700 017.

The petitioners allege that objection filed against such unauthorised construction has not been disposed of till date.

Learned advocate representing the respondent nos. 9 to 11 submits, upon instruction that, no construction is carried on at the instance of the aforesaid respondents.

None appears in respect of the respondent no. 8.

Service upon the respondent no. 8 has returned with the postal endorsement 'not known'.

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

Learned advocate representing the KMC submits, upon instruction that, departmental enquiry revealed unauthorised construction and necessary steps have been taken to issue the stop work notice.

Despite the stop work notice, construction continued at the instance of the person responsible and accordingly Section 401A of the KMC Act 1980 has been invoked. Proceeding under section 400 of the KMC Act is continuing.

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 being Executive Engineer (Civil/ Building), Borough No. VII, Ward No. 064 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 learned advocate for the petitioners is directed to forward a copy of the representation served upon the Executive Engineer on 8th December, 2022 to the aforesaid respondent at the time of communicating the order of the Court.

The Officer-in-Charge of the jurisdictional police station shall ensure that the FIR lodged under Section 401A of the Act reaches its logical conclusion at the earliest and no construction work at the site shall be permitted till further orders passed by the KMC.

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.)