

Item No.266(ml)

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

03.02.2023
Ct-24

WPA 771 of 2022
Sakti Sankar Roy

v.
The Kolkata Municipal Corporation & Ors.

Mr. Malay Krishna De
Mr. Arunava Maiti
... for the State.

None appears on behalf of the petitioner at the time of call.

The Kolkata Municipal Corporation and the private respondent are not represented either.

It appears from the averments made in the writ petition and the documents annexed thereto that the petitioner complains of illegal and unauthorized construction by filling up of water body situated at premises no. 219, Picnic Garden Road, P.S.-Kasba, Kolkata- 700039 under Ward No. 67.

The objection filed before the Kolkata Municipal Corporation is yet to be disposed of.

Learned advocate representing the Officer-in-Charge, Kasba Police Station submits, upon instruction that, on receipt of a complaint steps were taken to ascertain and identify the water body. Intimation was also sent to the building department of the Kolkata Municipal Corporation.

As there was no intimation from the Kolkata Municipal Corporation, the police took steps to stop the illegal construction.

The police registered the Kasba P.S. Case No. 298 dated September 21, 2021 under Section 401A of the Kolkata Municipal Corporation Act, 1980 against the private respondent and others. Investigation of the aforesaid case is under progress.

As neither the Kolkata Municipal Corporation nor the private respondent is represented in Court, the matter cannot be decided conclusively.

In view of the order that I propose to pass no prejudice shall be caused to the non-appearing respondents, if the writ petition is disposed of in the following manner.

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. 2 or his delegate to consider and dispose of the representation made by the petitioner strictly in accordance with law, after giving an opportunity of hearing to all the necessary parties including the petitioner 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 petitioner 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 petitioner and all points are left open to be decided by the aforesaid respondent at the time of consideration of the representation of the petitioner.

The petitioner is directed to forward a copy of the representation dated September 1, 2021 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.

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(Amrita Sinha, J.)