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12.06.2023
d.p.

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

W.P.A 1596 of 2023

**Tapan Gope
-versus
The State of West Bengal & Ors.**

**Mr. Ratul Das,
Md. Dilawar Khan,
Mr. Shivam Pathak.
...For the Petitioner.**

**Mr. Sandipan Banerjee,
Mr. Sobhan Majumder.
...For DMC.**

The matter was appearing in the Monthly Combined List of June 2023. The same has been mentioned for upgradation by the learned advocate representing the petitioner citing urgency.

Notice of upgradation was not served upon the private respondents.

The case made out by the petitioner is that the petitioner took steps for renovation of an existing old construction. The Durgapur Municipal Corporation issued a stop work notice and afforded opportunity of hearing to the petitioner in the year 2021.

The petitioner admits that the reconstruction was being made without obtaining prior sanction/permission from the Durgapur Municipal Corporation.

The petitioner applied for sanction of plan in May 2022 and alleges that the same is yet to be disposed of by the Corporation.

Learned advocate appearing for the Durgapur Municipal Corporation submits that the petitioner is guilty of raising unauthorized construction without obtaining any sanction from the Corporation. After the construction is over, the petitioner cannot apply for obtaining sanction plan.

Learned advocate appearing for the petitioner submits, upon instructions that, the construction is half-done and the petitioner is not in a position to reside in the subject premises.

It appears from the submissions made on behalf of the appearing parties and upon perusal of the materials on record that, admittedly, the petitioner started construction/reconstruction without obtaining any permission from the Durgapur Municipal Corporation. The same is not permissible in law.

According to the provision of law, construction can be made only after obtaining sanction and not prior thereto. The Corporation rightly issued a stop work notice.

It appears that the said stop work notice was issued in October 2021 but thereafter the Durgapur Municipal Corporation did not take any steps to follow up the same so that the construction made by the petitioner can either be regularized or demolished in accordance with the provisions of law.

The petitioner has filed an application for sanction of the construction made in May 2022.

The Corporation ought to have considered the same and returned a finding with regard to the maintainability of the said application seeking sanction.

The Corporation has sat tight over the matter for considerable period of time.

Learned advocate appearing for the Corporation has submitted before this Court that presently physical applications for obtaining sanction plan are not accepted by the Corporation and all applications are required to be filed online through the portal of the Corporation.

The petitioner shall be obliged to file the application online through the portal of the Corporation and thereafter forward physical copy of the same to the aforesaid respondent.

In view of the above, the instant writ petition is disposed of by directing the Commissioner, Durgapur Municipal Corporation to take necessary steps to consider the prayer of the petitioner for sanctioning the construction made in accordance with law after giving a reasonable opportunity of hearing to all the necessary parties and pass a reasoned order.

Steps shall be taken in the matter at the earliest, but positively, within a period of four months from the date of communication of a copy of this order.

Learned advocate appearing for the petitioner is directed to forward a copy of the stop work notice, the

reply thereto made by the petitioner, the hearing notice issued by the Corporation, the reply filed by the petitioner and the application for sanction of the building plan with the photocopy of the plan proposal to the aforesaid respondent at the time of communicating the order of the Court.

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 application of the petitioner.

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.)