

04.04.2023
Item No. 21
Court No. 24
AGM

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

WPA 1867 of 2023

**Afsana Khatoon
Vs
The Howrah Municipal Corporation & Ors.**

**Mr. Soujanya Bandopadhyay
... For the Petitioner.**

**Mr. Jagabandhu Roy
Mr. Joy Chakraborty
Mr. Sandip Dinda
... For the respondent no. 8.**

**Mr. Anirban Ghosh
... for the respondent no. 9.**

**Mr. Prasanta Kumar Giri
Ms. Rupsha Chakraborty
... For the State.**

**Mr. Sandipan Banerjee
Ms. Monalisa Maity,
... for the Howrah Municipal Corporation.**

The petitioner complains that the respondent nos. 8 and 9 are responsible for making illegal and unauthorised construction at holding no. 18, Biprodas Chatterjee Lane, PS Shibpur, Ward no. 34 under jurisdiction of Howrah Municipal Corporation.

The petitioner complains that repeated objections filed before the Howrah Municipal Corporation has remained unanswered.

Learned advocate representing the respondent no. 8 being the owner of the subject property submits, upon instruction that, initially a development agreement was entered into by and

between the owner and the developer, the respondent no. 9. After construction of the second floor of the subject premises, the development agreement stood terminated. Presently, the owner is not aware whether any unauthorised construction is going on at the subject premises and if at all, the same is going on behind the back and without the knowledge of the owner.

Learned advocate representing the respondent no. 9 submits, upon instruction that, a development agreement was entered into between the owner and the developer but after the construction was over till the second floor level, the development agreement stood terminated.

The respondent no. 9 is not at all connected with any construction made beyond the second floor level.

It has been submitted that at present a fresh development agreement has been entered with Mr. Nurul Amin and Mr. Sabir Ali as developers of the property.

Learned advocate representing the petitioner has annexed photographs to show that presently the construction is over till the G+2 floors and the third floor is presently under construction.

Learned advocate representing the Howrah Municipal Corporation submits that necessary steps shall be taken to deal with the unauthorised construction.

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

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, the Commissioner 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 learned advocate for the petitioner is directed to forward a copy of the representation dated 11th January, 2023 to the aforesaid respondent at the time of communicating the order of the Court.

The report filed by the Inspector in-Charge, Shibpur Police Station dated 31.01.2023 be retained with the records.

Mr. Sandipan Banerjee, learned advocate who is present in Court and who usually represents Howrah Municipal Corporation before this Court is requested to enter appearance on behalf of the Howrah Municipal Corporation in the instant writ petition.

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.)