

13.02.2023

sl.no.23

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In the High Court at Calcutta

Constitutional Writ Jurisdiction

Appellate Side

W.P.A. 2270 of 2022

Rang Bahadur Das

Vs.

The State of West Bengal & Ors.

Mr. Dev Kumar Sharma

... for the petitioner

Mr. Susanta Pal

Mr. Prabir Kumar Ray

... for the State

Mr. Ayan Banerjee

Ms. Debasree Dhamali

... for Bally Municipality

Mr. Sandipan Banerjee

Mr. Ankit Sureka

Mr. Sobhan Majumder

... for Howrah Municipal Corpn.

The petitioner complains of illegal and unauthorised construction at the instance of the private respondent at 22, Kundan Bye Lane, P.S. Liluah, Ward No.65 (old Ward No.31), presently under the jurisdiction of Bally Municipality. The petitioner complains that the objection filed against such unauthorised construction has not been disposed of till date.

None appears on behalf of the private respondents. Affidavit of service filed in Court is taken on record.

Learned Advocate representing the Bally Municipality submits, upon instruction that, a stop-work notice was issued directing the person responsible to forthwith stop the construction work on 6th March, 2022.

It appears that after the objection was received by the Municipality, stop-work notice was issued, but thereafter the same was not followed up by the Bally Municipality. When an objection has been filed alleging illegal and unauthorised construction, the respondent authority ought to decide the issue at the earliest, otherwise the person responsible will continue with the unauthorised construction and thereafter transfer possession in favour of unsuspecting buyers creating third party rights.

In view of the order that I propose to pass, none of the parties will be prejudiced 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.4, Bally Municipality, 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 twelve weeks 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 7th January, 2022 to the aforesaid respondent at the time of communicating the order of the Court.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)