

ML 124
24.04.2023
d.p.

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

W.P.A 2289 of 2022

**Md. Nowman Khan
-versus
The State of West Bengal & Ors.**

**Ms. Priyanka Paul.
...For the Petitioner.**

**Mr. Susanta Pal,
Ms. Susnita Saha.
...For the State.**

**Mr. P. Dhole,
Mr. A.K. Hazra,
Mr. Animesh Samanta,
Ms. Soumi Chatterjee.
...For the Respondent
Nos. 11 and 12.**

None appears on behalf of the Kolkata Municipal Corporation.

An accommodation has been sought for on behalf of the learned advocate appearing for the petitioner.

Learned advocate appearing for the private respondent nos. 11 and 12 challenges the locus of the petitioner in filing the present writ petition alleging illegal and unauthorized construction at the behest of the respondent nos. 11 and 12.

It has been submitted that the petitioner, not being the owner of the subject property, the writ

petition alleging unauthorized construction will not be maintainable.

It appears that the petitioner time and again approached the respondent authorities with a prayer to stop the unauthorized construction at T-48, Panchpara Road, P.S.- Nadial, District- Kolkata, Pin-700018.

The submission of the private respondents that the writ petition will not be maintainable at the instance of the petitioner cannot be accepted by the Court.

The Hon'ble Supreme Court has laid down that the allegation of unauthorized construction can be made even by a stranger to the property in question.

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 being the Commissioner, Kolkata Municipal Corporation 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 received by the Executive Engineer on 17th July, 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.

(Amrita Sinha, J.)