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AGM

10.04
2023

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

WPA 3539 of 2023

**Sri Sandip Ghosh & Ors.
Vs
The Howrah Municipal Corporation & Ors.**

Mr. Tanmoy Mukherjee
Mr. Sourik Das
Mr. K. R. Ahmed
Mr. Rudranil Das

... For the petitioners.

Mr. Sandipan Banerjee
Mr. Ankit Sureka
Mr. Sobhan Majumdar

... For the KMC.

Mr. Ejaz Khan
Mr. Prodip Kumar De
Ms. Ananya Adhikary

... For the private respondent.

Mr. S. T. Mina
Mr. Pratim Sardar

... For the private respondent nos. 6 and 7.

The petitioners complain of illegal and unauthorised construction including change of use of the car parking space to a residential unit in holding no. 724, Sarat Chatterjee Road, P.S. Chatterjeehat formerly Shibpur, District- Howrah under jurisdiction of Howrah Municipal Corporation.

The petitioners allege that the car parking area has been illegally converted to a residential unit and sold out by the developers the respondent no. 4 (a) and (b) to the respondent nos. 5 and 6.

Objection filed against such illegal and

unauthorised construction is pending consideration before the Howrah Municipal Corporation.

Learned advocate representing both the developers and the private respondents submits, upon instruction that, prayer has been made before the Howrah Municipal Corporation seeking regularization of the construction made and permitting change in the mode of use of the subject premises from car parking space to residential unit.

It appears that a Suit has been filed by the private respondent nos. 5 and 6 against the petitioners herein being T.S. 1475 of 2023 before the Civil Judge (Junior Division), 3rd Court, Howrah in respect of the residential unit which was constructed after conversion of the car parking space.

It further appears from the averments made in the plaint of the said Suit that the private respondents being the plaintiffs of the Suit did not mention about the residential unit being constructed after conversion of the car parking space without obtaining any permission from the HMC.

Any construction made in deviation of the plan sanctioned is unauthorised and illegal.

The Howrah Municipal Corporation has not been impleaded as party respondent in the said suit.

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 Commissioner, HMC being the respondent no. 2 or his delegate to consider and dispose of the representation made by the petitioners strictly in accordance with law, after giving an opportunity of hearing to all the necessary parties including the petitioners 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 petitioners 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 petitioners and all points are left open to be decided by the aforesaid respondent at the time of consideration of the representation of the petitioners.

The learned advocate for the petitioners is directed

to forward a copy of the representation dated 18th November, 2022 to the aforesaid respondent at the time of communicating the order of the Court.

It is made clear that the respondent authority shall decide the issue ignoring the fact of pendency of the Title Suit in respect of the residential unit in the learned Court below.

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.)