

Item No.14

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

10.04.2023
Ct-24

WPA 4533 of 2023
Sri Prabhat Kumar Mitra
v.
The State of West Bengal & Ors.

Mr. Siddheswar Chandra
Mr. Sandip Dutta
... for the petitioner.

Mr. Arunava Banerjee
Sk. Qareeb
... for the Halisahar Municipality.

Mr. Debasish Chattopadhyay
Mr. Loknath Paul
Mr. Shoumya Basu
Mr. Tirthankar Basu
... for the respondent nos. 6 & 7.

The petitioner complains of illegal and unauthorized construction over a joint property. The specific submission is that a garage has been constructed at the instance of the private respondents without obtaining any permission/sanction from the Halisahar Municipality. Objection filed against such unauthorized construction is pending consideration till date.

Learned advocate representing the private respondent nos. 6 & 7 submits, upon instruction that, the suit for partition has been disposed of. The private respondents have sold of their shares in favour of the intending purchasers and at present they are no way connected with the said property.

It has been submitted that no construction has been made at the instance of the respondent nos. 6 & 7.

The present owners of the property, i.e, the buyers of the shares sold by the respondent nos. 6 & 7 have not been made parties in the present case. Prayer has been made for dismissal of the writ petition on the ground of non-joinder of necessary parties.

Learned advocate representing the Municipality is yet to receive instruction in the matter.

Without proper instruction from the Municipality it is not possible for the Court to ascertain as to whether there has been any unauthorized construction or not.

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, Halisahar 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 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 dated January 21, 2023 to the aforesaid respondent at the time of communicating the order of the Court.

The writ petition stands disposed of.

Affidavit-of-service filed in Court today be taken on record.

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

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(Amrita Sinha, J.)