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17.04.2023
d.p.

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

W.P.A 4552 of 2023

**Sima Saha
-versus
The Howrah Municipal Corporation & Ors.**

**Mr. Mahendra Prasad Gupta,
Mr. Dilip Kumar Saila,
Mr. A. Panja.
...For the Petitioner.**

**Mr. Sandipan Banerjee,
Mr. Ankit Sureka,
Mr. Sobhan Majumder.
...For HMC.**

**Mr. Prasanjit Barman.
...For the Respondent
Nos. 7 to 14.**

The petitioner complains of illegal and unauthorized construction at the instance of the private respondents in a manner that is encroaching the private property of the petitioner.

A civil suit is pending consideration by and between the parties being Title Suit No. 979 of 2021.

The petitioner alleges that the objection filed against such unauthorized construction before the Howrah Municipal Corporation is pending consideration.

Learned advocate appearing for the private respondents submits, upon instructions, that the

instant writ petition is liable to be dismissed on the ground of *res judicata*.

The petitioner has already approached the civil court for the selfsame relief.

On perusal of the plaint it appears that prayer has been made for a decree of permanent injunction restraining the defendants from raising any further construction without leaving the mandatory side open spaces.

It has been contended that though there was an order of injunction at once stage, but only after the injunction order is vacated, the petitioner filed the present writ petition.

Learned advocate appearing for the Howrah Municipal Corporation submits, upon instructions, that the Municipality may look into the issue of unauthorized construction without entering into the allegation of encroachment.

It appears from the submissions made on behalf of all the parties that apart from the allegation of encroachment, there is an allegation of unauthorized construction without any sanction plan.

The Municipality will be the appropriate authority to take a decision as to whether the construction is being made in accordance with the plan sanctioned 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 being the Commissioner, Howrah 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 dated 31st January, 2022 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.)