

ML 162
25.04.2023
d.p.

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

W.P.A 4629 of 2022

**Shahnawaz Alam & Anr.
-versus
The Howrah Municipal Corporation & Ors.**

**Mr. Kushal Chatterjee,
Mr. Debrup Choudhury.
...For the Petitioners.**

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

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

The objection filed by the petitioners alleging illegal and unauthorized construction at the instance of the private respondents is pending consideration before the Howrah Municipal Corporation for a considerable period of time.

Learned advocate appearing for the Corporation is yet to receive instruction in the matter.

Affidavit-of-service filed in Court does not bear any proof of service upon the private respondent.

In view of the order that I propose to pass, none of the non-appearing parties will be prejudiced if the writ petition is disposed of in the following manner.

The petitioners complain that the objection raised against such illegal construction has not been considered by the respondent authorities till date.

As it appears that the representation of the petitioners 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.3 being the Commissioner, Howrah Municipal Corporation 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 petitioners are directed to forward a copy of the representation dated 2nd March, 2022 to the aforesaid respondent at the time of communicating the order of the Court.

The Officer-in-Charge of the jurisdictional Police Station is directed to render all necessary assistance to the men and agents of the Howrah Municipal Corporation in implementing the order passed by the Corporation.

It is made clear that in the event notice cannot be served upon the private respondents or the said respondents avoid service of the notice, then the Howrah Municipal Corporation shall affix all notices in connection with the proceeding to be initiated at conspicuous places in and around the subject structure for information of all concerned.

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.)