

Item No.19

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

26.04.2023
Ct-24

WPA 5395 of 2023
Moktar Ali Molla

v.

The State of West Bengal & Ors.

Mr. Soumen Barman
... for the petitioner.

Mr. Jaladhi Das
... for the State.

Mr. Raghunath Chakraborty
Mr. N. Ahmed
... for the Municipality.

The petitioner complains of illegal and unauthorized construction at the behest of the private respondent. The objection filed against such unauthorized construction is alleged to be kept pending.

It appears that Maheshtala Municipality by a notice dated January 27, 2023 directed the private respondent to discontinue the construction work and to attend before the Sub-Assistant Engineer (Building Section) along with the sanctioned plan for a hearing.

Learned advocate for the Municipality is not aware whether the private respondent acted in accordance with the notice of the Municipality.

Learned advocate for the petitioner submits that the private respondent is the Councillor of the Municipality and, accordingly, she is carrying on the

construction work despite the stop work notice issued by the Municipality.

As the private respondent is not represented and the learned advocate for the Municipality is not ready with proper instruction, accordingly, the matter cannot be effectively adjudicated by this Court.

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, Board of Councillors, Mahestala 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 19, 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.)