

ML 189
26.04.2023
d.p.

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

W.P.A 5530 of 2022

**Sri Binod Kumar Gupta
-versus
The Howrah Municipal Corporation & Ors.**

**Mr. Surajit Roy.
...For the Petitioner.**

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

**Mr. Aritra Ghosh.
...For the State.**

**Mr. Abhirup Halder.
...For the Respondent No.10.**

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

The petitioner complains of illegal and unauthorized construction at the instance of the private respondents.

The objection filed against such unauthorized construction has not been considered till date.

Specific allegation of the petitioner is that the private respondent is guilty of making two additional floors. Sanction was obtained for construction of a two storied building but the private respondent has constructed four stories i.e. G+3.

Service upon the private respondent could not be effected; the postal endorsement records that intimation was served but none claimed the postal article.

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.3 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.

If the private respondent refuses to accept service of the notice or avoids service of notice by the Howrah Municipal Corporation, then the Corporation shall affix all notices in connection with the proceeding in question at several conspicuous places in and around the structure in question. The same will be sufficient notice upon all concerned.

The Inspector-in-Charge, Howrah Police Station is directed to render all necessary co-operations to the men and agents of the Howrah Municipal Corporation, if sought for.

The petitioner is directed to forward a copy of the representation dated 1st March, 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.)