

Item No.29

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

04.07.2023
Ct-24

WPA 7293 of 2023
Sri Monojit Banerjee
v.
The State of West Bengal & Ors.
with
CAN 1 of 2023

Mr. Supriyo Das
... for the petitioner.

Mr. Somnath Maitra
... for the respondent no. 9.

Mr. Arijit Dey
... for the Municipality.

Leave granted to the learned advocate-on-record of the petitioner to amend the description of the respondent no. 4 in the cause title of the writ petition.

The petitioner alleges that the private respondent is raising construction without obtaining a valid sanctioned plan and without maintaining the mandatory side open spaces. Specific allegation is that construction is being made by infringing the mandatory side open spaces.

According to the petitioner the objection filed against such unauthorized construction has not been taken up for consideration till date.

Learned advocate representing the private respondent denies the allegation of the petitioner. The learned advocate produces the plan which was

sanctioned for raising construction by the Baranagar Municipality in the year 2022.

It has been submitted that construction is being made strictly in accordance with the plan sanctioned.

Learned advocate representing the Baranagar Municipality submits, upon instruction that, on receipt of a complaint from the petitioner a spot inspection was conducted on March 22, 2023. At the time of inspection it was revealed that the construction was being made in accordance with the plan sanctioned. The Municipality failed to detect any unauthorized construction at the subject premises.

Upon hearing the parties it appears that the report of the Municipality does not disclose as to whether the mandatory side open spaces have been maintained at the time of raising construction.

In view of the above, the engineers of the Baranagar Municipality are directed to conduct further spot inspection upon notice to all the necessary parties and ascertain as to whether any unauthorized construction including infringement of mandatory side open spaces have been made or not.

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 Board of Councillors, Baranagar 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.

Leave granted to the petitioner to file representation giving details of the alleged unauthorized construction made at the premises no. 221/8, B.T. Road, Kolkata-700 036, Ward No. 27 under the jurisdiction of the Baranagar Municipality.

The writ petition and the connection application stand disposed of.

Affidavit-of-service filed in Court today is 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.)