

13.02.2023

sl.no.24

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In the High Court at Calcutta

Constitutional Writ Jurisdiction

Appellate Side

W.P.A. 7156 of 2022

Sk. Nasir Ali

Vs.

The Kolkata Municipal Corpn. & Ors.

Sk. Shahrukh Raja

... for the petitioner

Mr. Sudipto Panda

Mrs. Munmun Tewary

... for the State

Mr. Rajdeep Mantha

Mr. Shayak Chakraborty

... for respondent no.6

Leave is granted to the learned Advocate on record of the petitioner to correct the description of the respondent nos.3 and 4 in the cause title of the writ petition.

The matter relates to unauthorised construction at 29/1, Kustia Road, P.S. Tiljala, Borough VII under the jurisdiction of the Kolkata Municipal Corporation.

According to the petitioner, certain constructions have been made at the subject address without obtaining any sanction from the Kolkata Municipal Corporation. The legal representation filed on behalf of the petitioner is pending consideration.

Learned Advocate representing the respondent no.6, one of the persons responsible for making unauthorised construction, submits upon instruction

that, the construction which is alleged to be unauthorised was constructed with the consent and participation of all the co-owners of the property. The writ petitioner also happens to be one of the co-owners of the subject premises.

None appears on behalf of the Kolkata Municipal Corporation. Affidavit of service filed in Court is taken on record.

There is nothing on record to suggest that the top floor of the subject premises was constructed after obtaining sanction from the Corporation.

According to the Kolkata Municipal Act, 1980, construction can be made only after obtaining sanction and not prior thereto.

As it appears that the construction has been made without obtaining any sanction, accordingly, steps are required to be taken to deal with such unauthorised construction.

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

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, the Executive Engineer (Civil) /Building, Borough VII, Kolkata Municipal Corporation, 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 twelve weeks 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 learned advocate of the petitioner is directed to forward a copy of the representation dated 8th April, 2022 to the aforesaid respondent at the time of communicating the order of the Court.

Writ petition 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.)