

11
24.04.2023
d.p.

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

W.P.A 7793 of 2023

**Shahnawaz Ahmed Khan
-versus
The Municipal Commissioner, Kolkata
Municipal Corporation & Ors.**

**Mr. Subhajit Chowdhury.
...For the Petitioner.**

**Mr. Tapan Coomaar Dey,
Mr. Subhrangsu Panda.
...For KMC.**

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

None appears on behalf of the respondent nos. 8 and 9 in spite of service.

The private respondent nos. 6 and 7 could not be served and the postal envelop returned with the endorsement 'door locked'.

The petitioner complains of illegal and unauthorized construction at the behest of the private respondents at premises no. 8, Marquis Lane, Kolkata-700016, Ward No. 52, Borough-VI.

The specific allegation is that the construction is being made without leaving the mandatory side open spaces.

Objection was filed before the Corporation on 22nd March, 2023 and as the construction was made at a very fast pace, the petitioner affirmed the writ petition on 26th March, 2023.

Learned advocate appearing for the Corporation submits, upon instructions from the Executive Engineer, Assistant Engineer and the Sub-Assistant Engineer (Civil)/Building, Borough-VI, that departmental inspection revealed that a four storied framed structure has been constructed but the site where the construction has been made, has been found to be shifted from the actual sanction plan. No technical person has been engaged by the builder for supervision of the construction work.

The Corporation has issued notice under Section 401 of the Kolkata Municipal Corporation Act, 1980 with intimation to the local police station.

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 Executive Engineer, Building Department, Borough-VI 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 21st March, 2023 to the aforesaid respondent at the time of communicating the order of the Court.

The Officer-in-Charge of the New Market Police Station is directed to keep strict vigil over the property to ensure that no construction in any manner whatsoever is carried on at the subject premises till the matter is finally considered and disposed of by the Corporation.

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.)