

Item No.39

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

01.05.2023
Ct-24

WPA 8174 of 2022
Ashis Banerjee

v.

The State of West Bengal & Ors.

Mr. Sanjay Chakraborty
Mr. Asit Kumar De
... for the petitioner.

Mr. Mrityunjay Goswami
Mr. Parikshit Goswami
Mr. Sobhan Majumder
... for the respondent no. 2 to 4.

Mr. Subhas Chandra Saha
... for the private respondent no. 6

Mr. Himadri Sekhar Chakraborty
Mr. Bibekananda Tripathy
... for the State.

The petitioner complains of illegal and unauthorized construction over a joint property at the instance of the private respondents. A partition suit is pending consideration in between the parties before the learned 1st Civil Judge at Barasat. Submission is that construction is being made without obtaining any sanction or permission from the Madhyamgram Municipality.

Learned advocate representing the private respondents denies the allegation of the petitioner. It has been submitted that only an extension of the old construction has been made and, that too, with the consent of the family members. Learned advocate is not

aware as to whether the extension was made after obtaining any sanction from the Municipality or not.

An order dated April 17, 2023 passed in WPA 5025 of 2023 (Durga Banerjee v. State of West Bengal & Ors.) has been placed before this Court.

It appears therefrom that a writ petition was moved in respect of the selfsame property alleging unauthorized construction.

The Court directed the Municipality to consider the objection filed by the petitioner. As a similar objection in respect of the self same construction appears to be pending consideration before the Madhyamgram Municipality, accordingly, the Municipality is directed to consider the representation filed on behalf of the petitioner on April 20, 2022 along with the representation directed to be considered in WPA 5025 of 2023. Both the objections shall be considered in accordance with law after giving reasonable opportunity of hearing to all the necessary parties.

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 for the petitioner is directed to forward a copy of the representations dated April 20, 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.

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(Amrita Sinha, J.)