

Item No.45

In The High Court At Calcutta  
Constitutional Writ Jurisdiction  
Appellate Side

01.05.2023  
Ct-24

WPA 8503 of 2022  
Mrs. Sharmita Bhattacharya

v.

The Kolkata Municipal Corporation & Ors.

Mr. Somnath Ganguly  
Mr. Sukalpa Seal  
... for the petitioner.

Mr. Tapan Kumar Ghosh  
Ms. Debarati Sen (Bose)  
... for the State.

Mr. Gopal Chandra Das  
Mr. Rudranil De  
... for KMC.

The allegation of the petitioner is that the private respondent has made illegal and unauthorized construction by converting the garage to a flat. Objection filed against such unauthorized construction and conversion is pending consideration at the end of the Kolkata Municipal Corporation.

None represents the private respondents.

The affidavit-of-service implies that the postal article forwarded to the respondent nos. 7 & 8 have come back unserved with the postal endorsement "Unclaimed."

Learned advocate representing the Corporation is yet to receive instruction in the matter.

In view of the order that I propose to pass none of the non appearing 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, accordingly, no useful purpose will be served by keeping the writ petition pending.

The writ petition is accordingly disposed of by directing the respondent no. 2 being the Municipal Commissioner or his delegate to consider and dispose of the representation made by the petitioner strictly in accordance with law by giving a reasoned decision, 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 reasoned decision once passed shall be communicated to all the necessary parties, including the petitioner forthwith.

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 of the sanctioned plan, then necessary steps shall be taken dealing 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 between 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 petitioner's claim, and that all

points are left open to be decided by the aforesaid respondent at the time of consideration of the petitioner's representation.

The petitioner is directed to forward to the aforesaid respondent a copy of the representation dated January 25, 2022 received by the aforesaid respondent in March 2022 at the time of communication of the order of the Court.

The writ petition stands disposed of.

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

Learned advocate-on-record of the petitioner is directed to take back the unserved writ petition annexed to the affidavit-of-service by only keeping on record the unserved envelopes with the postal endorsement.

The report filed by the Beniapukuar Police Station be retained with the records.

Certified of this order, if applied for, be made available to the parties on compliance of usual legal formalities.

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**(Amrita Sinha, J.)**