

D/L
Item No. 02
22.09.2023
KOLE

**MAT 1656 of 2023
With
IA CAN 1 of 2023**

**Lisa Rani Bhuyia & Anr.
-Vs.-
The Howrah Municipal Corporation & Ors.**

*Mr. Prasenjit Burman,
Mr. Soumyajit Mondal,*

...for the appellants.

*Mr. Sandipan Banerjee,
Mr. A. Sureka,
Mr. S. Majumder,*

...for the HMC.

By consent of the appearing parties, the appeal and the connected application are taken up for hearing together.

This appeal is at the instance of the private respondents in WPA 9667 of 2023. That writ petition was disposed of by a learned Single Judge of this Court by a judgment and order dated July 17, 2023.

The appellants say that service has not yet been effected on the writ petitioner. However, we are not inclined to defer the hearing of this matter in view of the nature of the order that we propose to pass.

The writ petitioner approached the learned Single Judge alleging illegal and unauthorized construction at the behest of the private respondents in the writ petition who are the appellants herein. The grievance was that the appellants herein have made unauthorized construction without leaving mandatory side open space.

Various submissions were made before the learned Single Judge on behalf of the parties including the Howrah Municipal Corporation. The learned Judge noted that a representation made by the writ petitioner is pending consideration at the end of the Assistant Engineer, Building, Borough-VII, who was the respondent no. 3 in the writ petition and who is also the respondent no. 3 in this appeal. The learned Judge disposed of the writ petition with the following observations and directions:-

“Without entering into the allegation and the counter allegation of the parties, as it appears that a representation is pending consideration at the end of the Assistant Engineer, Building, accordingly, the respondent no. 3, being the Assistant Engineer, Borough-VII is directed to take necessary steps 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.

A spot inspection shall be conducted to ascertain the nature and extent of unauthorized construction.

In any event the aforesaid respondent is of the considered opinion that the construction has been made either in violation of the plan sanctioned or deviation of 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 10th April, 2023 to the aforesaid respondent at the time of communicating the order of the Court.”

Being aggrieved, the private respondents in the writ petition have come up before us by way of this appeal.

We have heard learned Counsel for the parties. Learned Counsel for the appellants says that the writ petitioner had no *locus standi* to maintain the writ petition. According to learned Counsel, the writ petitioner did not state in her pleadings as to how she is aggrieved by the construction made by the private respondents, which is 25 years old. According to learned Counsel, the writ petitioner cannot have any legitimate grievance in respect of the concerned construction.

We are unable to agree with learned Advocate for the appellants.

Good, bad indifferent, allegations of illegal construction have been made by the writ petitioner. It is not possible for the writ court to decide whether such allegations are true or not. Accordingly, in our view, the learned Judge rightly directed the Assistant Engineer to take a decision on the representation made by the writ petitioner. The said officer of Howrah Municipal Corporation is in the best position to ascertain whether or not unauthorized construction has been made by the appellants herein. The

learned Judge has taken care to ensure that principles of natural justice are observed by the said officer. We also clarify that full opportunity of hearing shall be given by the Assistant Engineer, the respondent no. 3, to all concerned parties including the appellants herein and the writ petitioner, before a decision is taken by the Assistant Engineer. All documents that may be produced by the parties shall be duly considered by the Assistant Engineer.

We see no reason to interfere with the order under appeal.

The appeal and the connected application fail and are, accordingly, dismissed.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)