

Item No. 53

20.02.2023
Ct-24

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 21970 of 2022
Joydeb Basak
v.
The State of West Bengal & Ors.

Mr. Subhrajit Saha
... for the petitioner.

Ms. Sima Adhikari
Ms. Mitali Mukherjee
... for the State.

Mr. Debasish Das
... for the respondent no. 3.

None appears on behalf of the private respondent.

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

The petitioner alleges illegal and unauthorized construction at the instance of the private respondent.

The petitioner contends that the private respondent, without leaving the mandatory side open spaces, is making unauthorized construction. Objection filed before the Municipality is yet to be disposed of.

It appears that Egra Municipality issued a notice to both the parties in August 2022 for demarcation of the property in question. The parties were requested to appear with necessary documents in support of their claim.

Learned advocate for the Municipality submits that a spot inspection was conducted earlier but after receipt of the fresh complaint inspection is yet to be conducted.

In view of the order that I propose to pass no prejudice shall be caused to the non-appearing respondents, 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. 2 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 June 20, 2022 to the aforesaid respondent at the time of communicating the order of the Court.

The writ petition stands disposed of.

The Municipality is directed to cause a spot inspection upon prior notice to both the parties and serve copy of the report to all the necessary parties.

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.)