

Item No.14

In the High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

18.12.2023
Ct-24

WPA 28145 of 2023
Kanhaiya Lal Jaiswal

v.

The Kolkata Municipal Commissioner & Ors.

Mr. Tanweer Ahmed Khan
Md. Babar Ansari
... for the petitioner.

Mr. Atis Kumar Biswas
... for KMC.

The petitioner complains of illegal and unauthorized construction at the behest of the private respondents at 44D, Hari Ghosh Street, Ward No.-017, Borough-II of the Kolkata Municipal Corporation.

Allegation is that complaint lodged against such unauthorized construction has not been disposed of till date.

None represents the private respondents.

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

Learned advocate representing the Corporation has relied upon the instruction forwarded by the Assistant Engineer(C)/Building Department, Borough-II signed on December 15, 2023 which mentions that during departmental inspection it was found that brick wall was being constructed over 4th floor of an existing four storied building.

A notice to stop construction was issued on August 11, 2015 with intimation to the police. Further notice under Section 401 of the Kolkata Municipal Corporation Act stood withdrawn as per the order of the Deputy Chief Engineer(C), Borough-II on August 25, 2015. Thereafter, the department sanctioned a reconstruction of roof plan under Rule 3(2)e of the Kolkata Municipal Corporation Building Rules, 2009 with addition of staircase with the stair head room.

The instruction does not make it clear as to whether any unauthorized construction is being carried on at present. The instruction relates to the construction work of the year 2015-2016. The complaint was lodged by the petitioner in 2020 followed by reminder in 2021 and 2023.

The Corporation ought to inspect the property and ascertain as to whether any construction has been made lately, which is unauthorized in nature.

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, the Executive Engineer, Borough-II 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 learned advocate for the petitioner is directed to forward the copy of the representation dated August 10, 2023 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.)