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20.11.2023
Court No. 24
AGM

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A 22090 of 2023

**Sk. Sahabuddin
-versus
The State of West Bengal & Ors.**

**Mr. Maidul Islam Kayal
Mr. Sumin Naskar
...For the Petitioner.**

**Mr. Sarajit Sen
Mr. Aniket Mitra
...For the respondent nos. 10 to 12.**

**Mr. Ansar Mondal
Md. Idrish
... For the State.**

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

The petitioner alleges illegal and unauthorised construction at the behest of the private respondents over holding no. 215, M.G. Road, Ward No. 18 under Budge Budge Municipality, Mauja Jaychandipur, J.L. No. 10, L.R. Dag No. 753.

Allegation is that construction has been made without a proper sanctioned plan encroaching upon the public land and the public footpath.

Objection filed against such unauthorised construction is pending consideration till date.

Learned advocate representing the private respondents raises preliminary issue with regard to the maintainability of the writ petition before this Court at the instance of the petitioner.

It has been submitted that the petitioner cannot be said to be an aggrieved party and he does not have the locus standi to file the instant writ petition.

None represents the Budge Budge Municipality.

Affidavit-of-service filed today in Court be kept with the records.

The State is represented by the learned Counsel.

The objection raised by the private respondents with regard to the maintainability to the writ petition cannot be accepted by the Court.

According to the provisions of law, all citizens are bound to comply with and act in accordance with the provisions of law. A construction can be made only upon obtaining a proper sanction and not prior thereto. The allegation of unauthorised construction is liable to be verified by the municipality.

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. 4, the Board of

Councillors, Budge Budge Municipality 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 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 5th September, 2023 to the aforesaid respondent at the time of communicating the order of the Court.

It will be open for all the parties to rely upon documents in support of their stand at the time of hearing.

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.

(Amrita Sinha, J.)