

Item No.19

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

27.03.2023
Ct-24

WPA 22850 of 2022
Mantu Kumar Mondal & Ors.
v.
The State of West Bengal & Ors.

Mr. Partha Sarathi Deb Barman
Mr. Kumaresh Dalal
... for the petitioner.

Mr. Debjit Mukherjee
Ms. Susmita Chatterjee
Mr. K. Bhattacharya
... for the respondent no. 9.

Mr. Kallol Basu
Mr. Suman Banerjee
... for HIT.

Mr. Susanta Pal
Mr. Prabir Kumar Ray
... for the State.

Mr. Satyajit Talukdar
... for KMDA.

Mr. Sandipan Banerjee
Mr. Ankit Sureka
Mr. Sobhan Majumdr
... for HMC.

The petitioners allege illegal and unauthorized construction over the premises at 59/4, Kantapukur 3rd Bye Lane, Kadamtala, P.S.-Bantra, District-Howrah, Ward No. 23, Borough-VI under the jurisdiction of the Howrah Municipal Corporation.

A suit for declaration of title is pending consideration before the learned Civil Court by and between the petitioners and the Howrah Improvement Trust (HIT).

The respondent no. 9 is presently the owner of the subject premises and submits that construction is being made in accordance with the plan sanctioned by the Howrah Municipal Corporation. As on date there is no final adjudication that the petitioners have any title or right over the property in question.

Learned advocate for the private respondent submits that an earlier writ petition was filed by the petitioners being WP No. 18197(W) of 2018. The present writ petition has been filed with exactly the same averments and the same prayers. The fact of filing the earlier writ petition has been suppressed in the present writ petition and after the same was brought to the notice of the Court, the petitioners filed a supplementary affidavit disclosing the aforesaid fact and annexed the copy of the order dated September 20, 2018 passed in the earlier writ petition.

The representation which the petitioners allege not to have been considered does not disclose the nature of the unauthorized construction. Apart from a bald allegation of unauthorized construction being made by the promoter over the property which is subjudice and acquired by the HIT, there is no detail of the unauthorized construction as alleged.

The learned advocate representing the Howrah Municipal Corporation submits, upon instruction that, there is no order restraining the Corporation from sanctioning any building plan in respect of the subject

premises. On receiving the application from the applicant, plan was sanctioned by the Corporation.

Learned advocate for the Corporation is not aware as to whether construction is being made in accordance with the plan sanctioned or not.

The grievance of the petitioner against HIT with regard to transfer of the property in favour of a third party despite an order restraining to do so, cannot be adjudicated in the present writ petition.

Though, a prayer has been made against the Kolkata Metropolitan Development Authority, but there is no grievance against the said authority.

From the submissions made on behalf of all the parties it appears that the title of the property in question qua the petitioners is yet to be adjudicated by the competent Civil Court. At this stage, the writ petition can only be restricted with regard to the allegation of unauthorized construction at the instance of the respondent no. 9. Objection filed against such unauthorized construction is an absolutely cryptic one, devoid of any details.

In view of the above, the present writ petition is disposed of by granting liberty to the petitioners to file appropriate application highlighting the alleged unauthorized construction. In the event, such a representation is made, the same shall be considered by the Howrah Municipal Corporation in accordance with law, after giving reasonable opportunity of hearing to all the necessary parties including the representatives of HIT.

Since the writ petition is being disposed of without calling for any affidavits, the allegations made therein are deemed not to have been admitted.

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.)