

Item No.3

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

26.04.2023
Ct-24

WPA 21854 of 2019
Pankaj Kumar Jana
v.
Midnapore Municipality & Ors.

Mr. Sanjay Mukherjee
... for the petitioner.

Mr. Sujay Bandyopadhyay
Mr. Shambhu Mahato
... for the Municipality.

The petitioner alleges illegal and unauthorized construction at the behest of the private respondents. Submission is that construction has been made without obtaining any sanctioned plan.

The petitioner relies upon the information supplied under the Right to Information Act, 2005 mentioning that no plan has been sanctioned for raising the construction.

The Municipality further intimated the petitioner that no steps could be taken against the construction made in view of the pendency of the Title Suit being T.S. No. 29 of 2017 before the learned 1st Court of Civil Judge (Junior Division), Paschim Medinipur.

None appears on behalf of the private respondents.

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

Learned advocate representing the Municipality produces the instruction forwarded by the Sub-Assistant Engineer, Midnapore Municipality signed on January 3, 2020 wherein it has been mentioned that a stop construction notice was served upon the person responsible in January 2017.

A complaint case was filed before the learned Executive Magistrate, Midnapur Sadar (N), Paschim Medinipur and a civil suit being T.S. No. 29 of 2017 is pending before the learned 1st Court of Civil Judge (Junior Division), Paschim Medinipur and, accordingly, the Municipality could not take any further steps in the matter.

The Municipality has noticed that the plan could not be sanctioned due to non-submission of record-of-rights.

It appears from the submissions made on behalf of the parties and the documents annexed to the writ petition that the petitioner is yet to raise any formal objection alleging unauthorized construction.

Accordingly, the present writ petition is disposed of granting liberty to the petitioner to file comprehensive representation highlighting the unauthorized construction that has been made.

In the event such a representation is made, the same shall be considered by the Municipality in accordance with law after giving reasonable opportunity of hearing to all the necessary parties.

A reasoned order shall be passed and communicated to the parties.

It is made clear that if the Municipality is of the opinion that the construction has been made in an unauthorized manner, then necessary steps shall be taken to deal with such unauthorized construction in accordance with law irrespective of the fact that a civil suit is pending in connection with the said structure as an order can be passed only in respect of a structure which has been constructed in an authorized manner in accordance with the plan sanctioned and the order of injunction cannot bind a construction made contrary to the provisions of law.

The writ petition stands disposed of.

Report of the Sub-Assistant Engineer be kept on record.

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.)