

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

W.P.A 23708 of 2023

**Nirmal Das & Ors.
-versus
The Howrah Municipal Corporation & Ors.**

**Mr. Debasish Kundu.
...For the Petitioner.**

**Mr. Sandipan Banerjee.
Mr. Ankit Sureka.
Mr. Sobham Majumdar.
... For the HMC.**

The petitioners claim to be the co-owners of premises nos. 112, 113, 122, 123 and 124, Dharmatala Road, Salkia, Howrah under the jurisdiction of Howrah Municipal Corporation.

Learned advocate representing the petitioners submits that a civil suit being CS no. 2024 of 1952 (Maloti Das & Ors –Vs- Jatindra Kumar Das & Ors) in respect of the subject premises is pending consideration before this Court. An order of injunction was passed restraining the parties to change the nature and character of the suit property.

The petitioners allege that the local goons are raising construction over the aforesaid premises without obtaining any sanction from the HMC.

It has been submitted that as the petitioners are not aware of the details of the persons at whose instance the construction is going on, accordingly, none could be arraigned as private parties in the instant writ petition.

Objection was filed through the learned advocate before the HMC highlighting the unauthorised construction but the same has not been considered till date.

Learned advocate representing the HMC submits that without the details of the persons responsible for making construction, the notice of spot inspection and the subsequent notice for hearing cannot be served. The same will give rise to further litigations if any action is taken by the Corporation in respect of the unauthorised constructions.

It has further been submitted that all the co-owners of the subject property have not been added as parties and, accordingly, direction may be passed for adding all the co-owners of the property as parties in the instant writ petition.

I have heard the submission made on behalf of all the parties.

A complaint alleging unauthorised construction is pending consideration at the end of the HMC. The Corporation is only required to ascertain as to whether the construction in question is being made in accordance with any sanction granted by the Corporation. The Corporation is not required to enter into or decide any private dispute in between the owners/ co-owners of the property. It is the bounden duty of the Corporation to monitor and ensure that the construction is made in accordance with the plan sanctioned and not otherwise.

The Corporation is, accordingly, directed to cause a spot inspection upon prior notice to the petitioners to ascertain the nature and extent of unauthorised construction, if any.

As the Corporation has not yet been made aware of the persons at whose instance the construction has been made, accordingly, the Corporation is directed to

affix the notice of spot inspection and subsequent notice of hearing at various conspicuous places in and around the subject structures so that everybody in connection with the structure may get knowledge of the spot inspection and hearing.

The Corporation shall provide opportunity of hearing to any person who claims responsibility for construction of the structures in question.

Spot inspection shall be conducted at the earliest but positively by 20th December, 2023.

Report of spot inspection shall be circulated amongst the parties who are available. Thereafter, opportunity of hearing shall be granted by the Corporation to allow the parties to produce documents in support of the construction made.

In the absence of a proper sanctioned plan, it will be open for the Corporation to take steps in accordance with law to deal with the said construction.

The proceeding shall be concluded positively within sixty days from the date of circulation of the spot inspection report.

Learned advocate for the petitioners is directed to serve a copy of the legal representation dated 11th September, 2023 along with other relevant documents to the HMC 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.

(Amrita Sinha, J.)