

07
10.04.2023
d.p.

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

W.P.A 25701 of 2022

**Sri Sudipta Gupta & Ors.
-versus-
Kamarhati Municipality & Ors.**

**Mr. Tapan Kumar Rakshit,
Mr. Surajit Roy.
...For the Petitioners.**

**Mr. Amber Majumdar,
Mr. Pranab Kumar Chatterjee,
Mr. Abhishek Sikdar.
...For the Respondent No.7.**

**Mr. Sankha Subhra Ray.
...For the Municipality.**

**Ms. Jayeeta Sinha,
Mr. Sandip Mandal.
...For the State.**

The petitioners complain of illegal and unauthorized construction.

Report was called for from the Municipality. In the said report, the Municipality has mentioned that the building plan was sanctioned in stages. The dates as on which the particular floor of the proposed construction was sanctioned, are mentioned in the report.

The report further mentions that departmental inspection revealed that there is minor deviation of 0.38% caused due to extension of cantilever for the balconies.

The petitioners submit that the plan in question was sanctioned in the name of a dead person, Kamala Mondal who expired on 19th July, 2020. Portion of the structure was sanctioned after the death of the said Kamala Mondal.

It has further been submitted that the Municipality being aware of the death of the said Kamala Mondal, sanctioned the ground floor to the top/third floor roof after her death.

The Power of Attorney executed by Kamala Mondal expired on the date of her death and the Municipality could not have sanctioned the plan after her death.

Learned advocate appearing for the private respondent no. 7 submits that the writ petition is not maintainable. The petitioners do not have the *locus standi* to maintain the writ petition.

It has further been submitted that the construction has been made in accordance with the plan sanctioned.

The petitioners have filed an exception to the report and have submitted that the spot inspection appears to have been taken prior to the construction made, which is not possible. The inspection can be made only after construction is made and not prior thereto.

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

From the report filed by the municipality it does not appear that there is major unauthorized construction at the subject premises.

It will be open for the Municipality to take steps to deal with the unauthorized construction, as detected, in accordance with law.

The sanction of the building plan and the act of the municipality on the death of the executor of the Power of Attorney can be scrutinized only after examination of proper evidence. The same cannot and ought not to be decided by the writ court. It will be open for the petitioner to seek remedy before the appropriate forum, if so advised.

In view of the above, no relief can be granted to the petitioners in the instant writ petition.

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.)