

11
04.04.2023
d.p.

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

W.P.A 27437 of 2022

**Amal Adhikary @ Amal Kant Adhikary & Anr.
-versus
The Kolkata Municipal Corporation & Ors.**

**Mr. Saurabh Guhathakurta,
Ms. P. Bharara,
Mr. Sourav Sarkar,
Ms. Nilanjana Sarkar.
...For the Petitioners.**

**Mr. Rudranil De,
Mr. Abhisek Sikdar.
...For KMC.**

**Ms. Jhuma Chakraborty,
Mr. Aritra Ghosh.
...For the State.**

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

The petitioners complain of illegal and unauthorized construction at the instance of the respondent no.6 at premises no. 20, Suren Sarkar Road, Ward No.-33, Kolkata-700010 under Borough-III of the Kolkata Municipal Corporation.

The petitioners allege that the construction is being made without maintaining the mandatory side open spaces. Repeated objections filed by the petitioners remained unanswered.

The affidavit-of-service does not show that the copy of the writ petition has been served upon the private respondent. The postal endorsement shows that the private respondent could not be located.

Learned advocate appearing for the Kolkata Municipal Corporation is yet to receive instruction in the matter.

In view of the order that I propose to pass, none of the parties will be prejudiced if the writ petition is disposed of in the following manner.

The petitioners complain that the objection raised against such illegal construction has not been considered by the respondent authorities till date.

As it appears that the representation of the petitioners 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 being the Executive Engineer (Civil), Borough-III, Building Department, Kolkata Municipal Corporation to consider and dispose of the representation made by the petitioners strictly in accordance with law, after giving an opportunity of hearing to all the necessary parties including the petitioners 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 petitioners immediately thereafter.

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 petitioners and all points are left open to be decided by the aforesaid respondent at the time of consideration of the representation of the petitioners.

The petitioners are directed to forward a copy of the representation dated 5th December, 2022 to the aforesaid respondent 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.)