

24-01-2023
Item No.15 AD
Subrata
Bhattacharyya

IN THE HIGH COURT AT CALCUTTA
Constitutional writ Jurisdiction
Appellate Side

WPA No.27992 of 2022
Smt. Madhabi Das
-vs-
The State of West Bengal & Ors.

Mr. Sanjib Seth ...for the petitioner

Mr. Naba Kumar Das
Mr. Subhabrata Das ...for the State

Mr. Sandipan Banerjee
Mr. Santanu Chatterjee ...for the Corporation

Mr. Tarique Quasimuddin
Mr. Irshad Yaqub ...for respondent no.11

The petitioner complains of illegal and unauthorised construction at the instance of the private respondent and alleges that repeated objections filed before the Howrah Municipal Corporation have not been considered by the authority concerned till date.

Learned advocate representing the eleventh respondent submits, upon instructions, that the petitioner has already filed a civil suit before the learned Civil Judge at Howrah and the same is pending. The Mayor-in-Council of Howrah Municipal Corporation has been impleaded as a defendant in the said suit. The petitioner made a prayer restraining the defendants in the suit from raising any construction and the said prayer was allowed by the court below. It has been submitted that at present no construction work is being made.

Learned advocate representing the Municipal Corporation is not ready with proper instructions in the

matter.

It appears from the documents annexed to the writ petition that a civil suit being Title Suit No.1326 of 2022 is pending consideration before the learned 5th Civil Judge (Junior Division), Howrah. The suit is for declaration and injunction.

The petitioner being the plaintiff in the said suit sought for a decree of declaration in respect of certain property and also prayed for a declaration that the defendant does not have any right to make construction over a part of the said property being schedule "C".

In the said suit, the petitioner did not pray for any order of demolition of the unauthorised construction. The prayer for demolition of the unauthorised construction is required to be considered by the Municipal Corporation. The objection filed by the petitioner before the Corporation is pending consideration.

As it appears that the representation of the petitioner 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.3 being the Commissioner, Howrah Municipal Corporation to consider and dispose of the representation made by the petitioner strictly in accordance with law, after giving an opportunity of hearing to all the necessary parties including the petitioner 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 petitioner 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 petitioner and all points are left open to be decided by the aforesaid respondent at the time of consideration of the representation of the petitioner.

The petitioner is directed to forward a copy of the representation dated November 21, 2022 to the aforesaid respondent at the time of communicating the order of the Court.

A report filed by the inspector in-charge of Malipanchghora police station dated December 21, 2022 is retained with the records.

The Municipal Commissioner or his delegate and the inspector in-charge of Malipanchghora police station shall ensure that no unauthorised construction at the subject premises is made at the instance of either of the parties.

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]