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12.09.2023
d.p.

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

W.P.A. 29116 of 2022

**Prakash Kumar Shaw & Ors.
-versus
The Howrah Municipal Corporation & Ors.**

**Mr. Subhaash Ch. Basu,
Mr. Promod Kumar Sinha.
...For the Petitioners.**

**Mr. Sandipan Banerjee,
Mr. Ankit Sureka,
Mr. Sobhan Majumder.
...For HMC.**

**Mr. Subhasis Chakraborty,
Mr. Sunny Nandy,
Mr. Amit Chowdhury,
Ms. Sushmita Kumari Singh.
...For the Respondent
nos 5 to 7.**

The petitioners complain of illegal and unauthorized construction at 3, Upendra Nath Mitra Lane, P.S.-Golabari within the jurisdiction of the Howrah Municipal Corporation.

The petitioners complain that the construction is being made without proper sanctioned plan.

Learned advocate appearing for the private respondents submits that the construction is being made in accordance with the plan sanctioned.

Learned advocate appearing for the Corporation submits that sanction was granted for construction of G+1 storied structure. The person responsible constructed the said structure in deviation of the plan sanctioned. Apart from the above, the person responsible constructed additional floors without any sanction at all.

Complaint against such unauthorized construction is pending consideration till date.

Taking advantage of the inaction on the part of the Corporation, the person responsible went on raising additional floors without obtaining any sanction.

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 Commissioner or his delegate 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.

A spot inspection shall be conducted to ascertain the nature and extent of unauthorized construction.

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 Commissioner, Howrah Municipal Corporation is directed to consider taking strict action against the erring engineer who failed to take prompt action on receipt of the complaint lodged and permitted the person responsible to continue with the unauthorized construction.

The owner and the person responsible for making construction is restrained from creating any third party right in the subject structure till the issue of unauthorized construction is resolved by the Corporation and the Officer-in-Charge, Golabari Police

Station is directed to keep strict vigil to ensure that construction in any manner whatsoever is not carried out at the subject premises.

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.)