

WPO No.1130 of 2023
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

SMT. PURNIMA ROY & ANR.
VERSUS
THE STATE OF WEST BENGAL & ORS.

BEFORE :
THE HON'BLE JUSTICE AMRITA SINHA
Date : 17th May, 2023.

Appearance:

Mr. Asit Baran Raut Adv.
Mr. Tuhin Subhra Raut, Adv.
Ms. Ishita RAut, Adv.
Mr. Subhasish Chakraborty, Adv.
...for the petitioners.

Mr. Biswajit Mukherjee, Adv.
Mr. Debangshu Mondal, Adv.
...for the KMC.

Mr. Milan Kanti Mondal, Adv.
Mr. Diptyendu Kr. Pal, Adv.
..for the Respondent Nos. 6 & 7.

Mrs. Sipra Majumder, Adv.
Mrs. Debarati Sen (Bose), Adv.
... for the State.

The Court :-The petitioners complain that the private respondents are raising construction in such a manner that the projected verandah in the first floor of the petitioners' premises has been demolished. The petitioners have annexed photographs to exhibit that the projected verandah has been demolished at the instance of the private respondents. Objection filed against such illegal demolition in the hands of the private respondents is pending consideration before the Corporation.

Learned advocate representing the private respondents submits, upon instruction that, the projected verandah has been constructed illegally by the petitioners. The place where the projected verandah has been constructed falls within the property of the private respondents.

The issue in question is pending adjudication before the learned Civil Court. There are several orders of injunction passed by the learned Court below. The petitioners failed to obtain any order of injunction restraining the private respondents from raising construction in accordance with the plan sanctioned by the Kolkata Municipal Corporation.

On a perusal of the photographs annexed to the writ petition and upon hearing the submissions made on behalf of the all the parties, it appears that there is a dispute as to the ownership of the place where the projected verandah has been constructed. The petitioners claim that the same has been constructed within his portion of the land. The private respondents deny the aforesaid contention and submit that the construction has been made illegally over the land of the private respondents.

It will not be possible for the Corporation to decide as to whether there has been any encroachment by either of the parties at the time of making construction or at the time of demolition of any construction. The Corporation is only required to ascertain as to whether the construction is being made in accordance with the plan sanctioned or not.

A civil suit is pending consideration in the learned Court below. It will be open for the petitioners to ventilate their grievances before the learned Civil Judge in the pending suit and obtain necessary order therefrom.

The private respondents will be at liberty to raise construction in accordance with the plan sanctioned.

The Executive Engineer of the concerned Borough shall cause periodic inspection to ascertain as to whether the construction is being made in accordance with the plan sanctioned or not.

The petitioners allege that the private respondents are raising construction in violation of Rule 61 of the Kolkata Municipal Corporation Building Rules, 2009.

If specific complaint is raised before the Executive Engineer of the concerned Borough, the same shall be taken into consideration in accordance with law after giving a reasonable opportunity of hearing to all the necessary parties.

The writ petition stands disposed of.

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

Report filed by the Officer-in-Charge of Burtolla Police Station signed on 17th May, 2023 be retained with the records.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(AMRITA SINHA, J.)

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