

OD-2

WPO/1398/2023

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

SMT. MANU SENGUPTA

-Versus-

THE KOLKATA MUNICIPAL CORPORATION
AND ORS.

BEFORE

The Hon'ble Justice AMRITA SINHA

Date: 25th July, 2023

APPEARANCE:

Mr. Alak Kumar Ghosh, Adv.

Mr. Subhrangsu Panda, Adv.

Ms. Ira Bhattacharyya, Adv.

Mr. Sumitava Chakraborty, Adv.

...for the petitioner.

Mr. Biswajit Mukherjee, Adv.

Mr. Gurudas Mitra, Adv.

...for the KMC.

Mr. D. Mukherjee, Adv.

...for the State.

Mr. Milan Kanti Mondal, Adv.

Mr. Diptyendu Kumar Pal, Adv.

...for the respondent nos.5 & 6.

The Court: The affidavit of service filed in Court today is taken on record.

The petitioner complains of illegal and unauthorised construction in deviation of the sanctioned plan at the behest of the private respondents.

An earlier writ petition was filed in respect of the self same construction and the Court in WPO/1130/2023 (*Smt. Purnima Roy & Anr. vs. State of West Bengal & Ors.*) passed an order on 17th May, 2023 directing that if specific complaint of unauthorised construction is raised before the Executive Engineer of the concerned Borough, the same shall be taken into consideration in accordance with law after giving reasonable opportunity of hearing to all the necessary parties.

A complaint was lodged before the Executive Engineer of the Borough in June, 2023. The same is yet to be disposed of.

The petitioner submits that the plan in question has been obtained by practising fraud and misrepresentation.

It appears that the petitioner is yet to lodge a formal complaint before the Commissioner of the Corporation alleging sanctioning of building plan upon practising fraud and misrepresentation.

The only representation that appears to be pending consideration is the one alleging illegal and unauthorised construction.

Learned advocate representing the private respondents denies the allegations of the petitioner. It has been submitted that out of grudge and only for taking revenge, repeated writ petitions are being filed. Civil suit is pending consideration before the learned Trial Court. The construction in question is being made strictly in accordance with the plan sanctioned.

Learned advocate representing the Corporation submits that there is no cause of action to file the present writ petition. The

representation alleging illegal and unauthorised construction is pending consideration and the same will be considered in accordance with law. As regards the allegation of obtaining sanctioned plan by practising fraud and misrepresentation, the complaint is yet to be lodged before the Commissioner. The respondents pray for dismissal of the writ petition.

In response to the submission made on behalf of the respondents, learned advocate representing the petitioner submits that a complaint has already been lodged before the Commissioner with the allegation of obtaining sanctioned plan upon practising fraud and misrepresentation. The petitioner, however, submits that the same is not a comprehensive one and a detailed representation will be filed by the petitioner before the Commissioner seeking necessary relief.

In view of the submissions made hereinabove, it appears that the only relief that can be granted to the petitioner in the instant writ petition, is a direction upon the Executive Engineer of the concerned Borough to dispose of the representation filed by the petitioner alleging illegal and unauthorised construction.

To ascertain the allegation of unauthorised construction, a spot inspection upon prior notice to all the parties shall be conducted within three weeks. The nature and extent of the construction shall be examined at the time of spot inspection. It will be open for the parties to engage Licensed Building Surveyor to remain present at the time of spot inspection. The report of the spot inspection shall be circulated to all the parties.

Thereafter, a hearing will be given to the parties and a decision shall be taken in the matter.

The Executive Engineer shall endeavour to conclude the entire proceeding at the earliest, but positively within a period of twelve weeks from the date of communication of this order. A reasoned order shall be passed and communicated to the parties immediately thereafter.

If it transpires that there is any unauthorised construction in deviation of or devoid the sanctioned plan, necessary steps shall be taken to deal with the same in accordance with law.

Learned advocate for the petitioner is directed to forward a copy of the representation addressed to the Executive Engineer which was posted on 1st June, 2023 to the aforesaid respondent at the time of communicating the order of the Court.

The undated report filed by the Officer-in-Charge, Burtolla Police Station, Kolkata be retained with the record.

The writ petition (WPO/1398/2023) 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.)