

Item No.260-ML

In the High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

16.04.2024
Ct-24

WPA 968 of 2024

Sri Prithwish Kumar Roy
v.
The Howrah Zilla Parishad & Ors.

Mr. Sunny Nandy
Mr. Subhasis Chakraborty
Mr. A. Chowdhury
Ms. Sushmita Kumari Singh
Mr. Gopal Sarkar
... for the petitioner.

Mr. Sujit Bhunia
Mr. Dilip Kumar Shyamal
... for the respondent no.3.

Mr. Tarun Kumar Das
... for the respondent no. 6.

Ms. Mekhla Sinha
... for Howrah Zilla Parishad.

The petitioner complains of illegal and unauthorized construction at the behest of the private respondent. Series of objections have been filed before the Panchayat which are alleged to be kept pending.

Learned advocate representing the private respondent raises an issue with regard to the maintainability of the writ petition. It has been submitted that a civil suit was filed by the petitioner before the learned civil Court but the same has been withdrawn and thereafter the present writ petition has been filed.

It has been submitted that the principle of abandonment of claim will apply in the present case and the instant writ petition will not be maintainable.

The private respondent relies upon a decision delivered by the Hon'ble Supreme Court in the matter of ***Sarguja Transport Service v. State Transport Appellate Tribunal, M.P., Gwalior & Ors., paragraphs 6, 7, 8 & 9***, reported in ***(1987) 1 SCC 5*** wherein the Court held that when the first suit is withdrawn without the permission referred to in sub-Rule 3 of Rule 1 of Order 23 of the Civil Procedure Code the second suit would not be maintainable without permission of the Court to file fresh suit.

From the submission of the parties and upon perusal of the documents on record it is evident that the present writ petition revolves around the issue of unauthorized construction and the plan sanctioning authority is the only body to decide as to whether or not the construction has been made in accordance with the plan sanctioned.

The learned advocate representing the petitioner submits that the suit was specifically withdrawn for the purpose of filing the present writ petition so that the issue may be decided by the Gram Panchayat.

Admittedly, in the suit which was filed by the petitioner, the Panchayat was not impleaded as party. In the absence of the Panchayat the issue of unauthorized construction could not have been decided.

In view of the above, the objection raised by the private respondent with regard to the maintainability of the present writ petition stands overruled.

The private respondent submits that the construction in question has been made strictly in accordance with the plan sanctioned.

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, 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, at the earliest, but positively within a period of three months from the date 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.

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.

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 Panchayat Authority will not decide the right, title and interest of the parties and will restrict the decision only with regard to unauthorized construction being made without a sanctioned plan.

Learned advocate appearing for the petitioner is directed to forward a copy of the representation dated 3rd January, 2024 to the aforesaid respondent at the time of communicating the order of the Court.

The writ petition stands disposed of.

Supplementary affidavit and the affidavit-of-service filed in Court are taken on record.

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

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(Amrita Sinha, J.)