

09.07.2024
Sl.No.18
Suman
Ct.No.15

WPA 7582 of 2024

Smt. Usha Hela and Ors.
Vs.
The State of West Bengal and Ors.

Mr. Abhijit Chakraborty
..for the petitioners

Ms. Mousumi Bhowal
..for the Municipality

Mr. Indranil Roy
Mr. Parikshit Goswami
..for the State

Mr. Surya Prasad Chattopadhyay
Mr. Arjun Samanta
..for respondent nos. 9, 10 and 11

The petitioners seek to demolish an alleged unauthorised construction at holding no.71 (Old no. 124) lying and situated at 71/1, Dakshindari Road, Kolkata – 700048.

It appears that there is a dispute with regard to the ownership of the relevant property and Title Suit No.179 of 2019 is pending before the learned Civil Judge (Junior Division), Bidhannagar.

Initially, an injunction order was passed in the said suit restraining the predecessor-in-interest of the respondents from carrying out any construction work at the relevant premises.

It is not in dispute that the said order stood vacated.

The learned advocate appearing for respondent nos. 9 to 11 submits that since the suit was filed and an injunction order passed therein had been vacated long ago, the writ petitioners cannot maintain this writ petition with the similar prayer.

He has also drawn attention of this Court to Rule 31(2)(b) of the West Bengal Municipal (Building) Rules, 2007 to submit that it is open for the Corporation to regularise the deviated part of the said building.

It has further been submitted that the sole defendant in the suit died on October 1, 2021, and, therefore, the suit has been abated.

I am of the view that the cause of action of this writ petition and that of the title suit is entirely different. Primarily, the issue before this Court is whether respondent nos. 9 to 13 have undertaken any construction work at the relevant premises without any sanctioned plan from the Municipality or not. In the pending civil suit, the title with regard to the relevant property is in issue. The Municipality is also not a party to the suit.

Therefore, in my view, the pendency of the civil suit does not stand in the way of adjudicating this writ petition on merit.

Whether there has been any unauthorised construction in the premises in question should be decided by South Dum Dum Municipality.

Therefore, I dispose of this writ petition with a direction upon the Municipality to initiate a proceeding under Section 218 of the West Bengal Municipal Act, 1993. The Municipality shall conclude the proceedings within a period of three months from date after affording an opportunity of hearing to all concerned. If it is found that any unauthorised construction has been undertaken at the relevant premises, the Municipality shall take steps to demolish the same in accordance with law.

Accordingly, **WPA 7582 of 2024** is disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the learned advocates for the parties on usual undertakings.

(Kausik Chanda, J.)