

23.04.2024
Ct. 654
D/L 2
ab

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

**WPA 10929 of 2023
(Assigned)**

**Sanjoy Roy Chowdhury
-Vs-
Kolkata Municipal Corporation & Ors.**

Mr. Saptarshi chakraborty
... for the petitioner

Mr. Srijan Nayek,
Mr. S. Chatterjee
... for the Kolkata Municipal Corporation

Mr. Shehnaz Tareq Mina
Mr. Pratim Sardar
... for the private respondent no. 7

Affidavit of service filed on behalf of the petitioner
is taken on record.

By the present writ petition, the petitioner has
prayed for demolition of illegal and unauthorized
construction made by the private respondent no. 7
herein and also for initiation of proceeding under
Sections 400 and 401A of the Kolkata Municipal
Corporation Act, 1980 against the private respondent
for such illegal and unauthorized construction.

The petitioner's case in brief is that he is the
owner of land situated within L.R. Plot Nos. 207 and

208 under Mouza-Roynagar, comprised within Holding No. 221, Postal Park, P.S.-Bansdroni, Kolkata-700070 by virtue of registered sale deed executed on 17th Day of Septemer, 2007. The private respondent no. 7 is the adjoining owner of land comprised within Holding No. 221/1, Postal Park, P.S. Bansdroni, Kolkata-700070. The private respondent is making construction over his land upon deviation from the sanctioned plan which illegal and unauthorized. The petitioner made representations on 10th March, 2023 and 15th March, 2023 respectively before the respondent-Kolkata Municipal Corporation alleging of such illegal and unauthorized construction made by the private respondent. However, till date, no steps have been taken by the concerned authority. Hence, this writ petition.

Mr. Saptarshi Chakraborty, learned advocate for the petitioner submits that the respondent no. 7 has undertaken unauthorized construction over his land by deviation from the sanctioned plan. The said fact was brought to the notice of the respondent-Kolkata Municipal Corporation. Since no steps were taken by the concerned authority, the petitioner is compelled to file the present writ petition for removal of such illegal and unauthorized construction and also to initiate a proceeding under Sections 400 and 401A of the Kolkata

Municipal Corporation Act, 1980 against the private respondent.

In reply to the contentions raised on behalf of the petitioner, Mr. Shehnaz Tareq Mina, learned advocate for the private respondent submits that his client has undertaken the work of construction as per plan sanctioned by the Kolkata Municipal Corporation and as on date, the construction has been completed. He files a copy of the sanctioned plan, which is taken on record. He further submits that on the self-same cause of action the petitioner filed a title suit before the learned Civil Judge (Junior Division), 1st Court at Alipore being Title Suit No. 561 of 2023 against the private respondent and the officials of the Kolkata Municipal Corporation along with a prayer for ad-interim injunction. The said suit is still pending for adjudication. Upon consideration of materials on record, the ad-interim injunction has been refused by the trial Court. No appeal against such refusal of injunction has been preferred by the petitioner. In the light of the aforesaid submissions, he prays for dismissal of writ petition in *limine*.

It is not in dispute that the petitioner has filed a title suit before the learned Civil Judge (Junior Division), 1st Court at Alipore being Title Suit No. 561 of 2023 against the private respondent and the officials of the Kolkata Municipal Corporation. In the said suit, the

petitioner has prayed for demolition of illegal and unauthorized construction over 'A' Schedule property, which is the property of the private respondent. Such suit is still pending before the trial Court. On the self-same cause of action and similar set of facts the petitioner has filed the present writ petition. The dispute between the parties since pending before the civil court for adjudication the present writ petition is liable to be dismissed.

Accordingly, the writ petition being **WPA 10929 of 2023** stands dismissed.

All connected applications, if any, stand disposed of.

Interim order, if any, stands vacated.

There shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties upon compliance of all necessary legal formalities.

(**Bivas Pattanayak, J.**)