

13.05.2024

Ct. no.654

Sl. No.12

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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(Appellate Side)

W.P.A. 11923 of 2023

Chanchal Kundu
Vs.
The Chairman, Serampore Municipality & ors.

Mr. Umesh Kumar Saw
... for the petitioner

Mr. Gautam Lahiri
... for the respondent nos.1 & 2/
Serampore Municipality

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

Despite service none appears on behalf of the respondent no.3.

By the present writ petition the petitioner has sought for direction upon the respondent authorities to take steps in respect of illegal construction as indicated in the impugned order dated 5th April, 2023 passed by the respondent no.1-Chairman, Serampore Municipality.

The petitioner's case is that by virtue of a deed of settlement dated 29th April, 1952 the predecessor-in-interest of the petitioner namely, Santosh Kundu, since deceased, became the absolute owner of the said portion of the premises. Upon demise of said Santosh Kundu on 11th September, 2002, the petitioner, his brother Sarat Kundu and his mother Chiya Rani Kundu inherited the portion of the property left by Sarat Kundu, since deceased. The respondent no.3 has started illegal

construction on the eastern side of the petitioner's property without any sanction plan. The petitioner filed a writ petition being WPA 7419 of 2021 alleging of such illegal construction. In the said writ petition following direction was passed :

“ The writ petition is accordingly disposed of by directing the Serampore Municipality 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 within a period of three months from the date of 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.

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 unauthorised construction, in accordance with law.

The aforesaid respondent shall restrict the consideration of the representation with regard to unauthorized construction only and not enter into or decide any private dispute of the parties regarding right, title and interest in respect of the aforesaid land.”

Pursuant to aforesaid direction the respondent no.1 passed the impugned order on 5th April, 2023 observing that the buildings of the petitioner at 379, G.T. Road, Khatir Bazar, Serampore, Hooghly and respondent no.3 at 378, G.T. Road, Khatir Bazar, Serampore, Hooghly respectively are unauthorised and illegal.

Mr. Umesh Kumar Saw, learned Advocate for the petitioner submits that though the petitioner has no

sanctioned building plan but he has been residing thereat for last 70 years. The private respondent no.3 has undertaken illegal construction, which has to be removed. He seeks for appropriate direction.

Mr. Goutam Lahiri, learned Advocate for the respondent nos.1 and 2, Serampore Municipality submits that pursuant to the order passed by this Court in WPA 7419 of 2021 the Board of Councillors, Serampore Municipality passed order observing that both the buildings of the petitioner as well as the respondent no.3 are unauthorised and illegal. In such view of the matter, the order passed by Serampore Municipality does not call for interference. He also informs the Court that the Serampore Municipality will take appropriate steps in accordance with law against such unauthorised construction both by the petitioner as well as the respondent no.3.

It is found that the order dated 5th April, 2023 has been passed holding that the building of the petitioner is unauthorised on the ground that he could not produce any sanctioned building plan in respect of his building. During the course of hearing it has been admitted by the learned Advocate appearing on behalf of the petitioner that the petitioner does not have any sanctioned building plan. Further it manifest from the aforesaid order that the private respondent has also deviated from the sanctioned building plan.

In the aforesaid backdrop, the respondent no.1-Chairman, Serampore Municipality is directed to take appropriate steps in terms of its order dated 5th April, 2023 against such unauthorised construction in accordance with law.

With the aforesaid observation, the writ petition **WPA 11923 of 2023** stands disposed of.

All connected applications, if any, stand disposed of.

There will be, however, no order as to costs.

Interim order, if any, stands vacated.

All concerned parties shall act in terms of the copy of the order duly downloaded from the official website of this Court.

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

(Bivas Pattanayak, J.)