

ML. 23
06.05.2024
Court No. 24
AGM

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A 12029 of 2023

**Nemai Pada Sen
-versus
The State of West Bengal & Ors.**

**Mr. G. F. Hassan.
Ms. Varsha Roy.
... for the Petitioner.**

**Mr. Mayukh Mukherjee.
Mr. Abhijit Singh.
Mr. Sarthak Mondal.
... for the respondent no. 10.**

**Mr. Soumyajit Bhatta.
... for the respondent nos. 4 to 7.**

**Mr. Rajarshi Basu.
Mr. S. T. Mina.
... For the State.**

The petitioner complains of illegal and unauthorised construction at the behest of the respondent nos. 9 and 10. Respondent no. 10 happens to be the son of the respondent no 9, who has expired during the pendency of the writ petition.

The allegation is that the Municipality is not taking steps in response to the objection filed against unauthorised construction.

Learned advocate representing the private respondent no. 10 denies the allegation of the petitioner.

Learned advocate representing the Panihati Municipality has obtained instruction from the Sub Assistant Engineer signed on 25th of July, 2023 which mentions that:

“1. That the land in question measuring about 3 Cottah 12 Chittak 0 sq ft. more or less was allotted to Mr. Harendra Kumar Sen, CDC No. 581 by R. R. Commissioner vide Memo no. 393 (5) dated 29/08/1962.

2. After that the said land was recorded in the name of Sri. Sukumar Sen from S.D.O. Barrackpore, (C.S. Plot no. 3074, Part: E/P No. 99) on 24/09/2014 duly signed by the A.D.S.R. Barrackpore, North 24 Pgs vide Deed No. 95 in the year 2014. This Deed mentions that it is exempted from the Scheme.

3. That the said Sri Sukumar Sen then made a gift deed of the land in question in favour of his son, Sri. Samir Sen vide Deed no. 5377 of 2021 on 13/08/2021.

4. That the said Sri. Samir Sen then applied for mutation before the Panihati Municipal office and the Municipal authority granted mutation in his name against the gift deed in the records of Panihati Municipal office on 06/01/2022.

5. Then the said Sri. Samir Sen applied for sanction of building plan upon that plot of land before the Panihati Municipal office and the Municipal authority sanctioned the G+3 storied residential building plan in the name of Sri. Samir Sen, S/o Sukumar Sen. The building permit no. is SWS-OBPAS/2123/2022/0477 dated 09/01/2023 and the permit is valid upto 08/01/2026. Now Sri Samir Sen started construction of (G+III) building on his said land.

6. It is found that the construction is going on as per sanctioned building plan on the date of inspection.”

According to the Municipality, the construction is going on as per the sanctioned building plan.

Learned advocate for the petitioner submits that the plan in question might have been obtained upon misrepresentation and fraud.

It appears that objection has not yet been filed before the Municipality alleging misrepresentation and fraud at the time of obtaining the sanctioned plan. It will

be open for the petitioner to make appropriate representation before the Municipality seeking relief.

In the event such representation is made, the same shall be considered in accordance with law after giving reasonable opportunity of hearing to all the necessary parties.

As regards the allegation of making construction by the private respondent over the entire plot of land by encroaching the portion belonging to the petitioner, it will be open for the petitioner to approach the competent civil Court for remedy.

The writ petition 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.)