

Item No.08

In the High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

02.01.2024
Ct-24
AGM

WPA 23369 of 2023

Smt. Sanjaita Sana
v.
The Bhadreswar Municipality & Ors.

Mr. Syed Nurul Arefin
Mr. Rahul Singh
Mr. Sanjiv Agarwal

... for the petitioner.

Ms. Rupsha Chakraborty
Mr. D. Mukherjee
... for the State.

Mr. Kausik Karmakar
... For the respondent nos. 6 to 9.

Mr. Somnath Roy
... For the respondent nos. 1 to 4.

The petitioner has two fold prayers. First is non-consideration of the petitioner's prayer for grant of sanction which was made on 5th May, 2022 and second is the issue of unauthorised construction made by way of encroaching the private land of the petitioner.

It appears that a Title Suit has already been filed by the petitioner before the learned Civil Court against the person responsible for making unauthorised construction impleading the Municipality as proforma defendant in the said suit.

The petitioner prays that direction be issued upon the municipality for taking steps to consider her prayer for grant of sanction and to conclude the proceeding initiated by the municipality to deal with the unauthorised construction made by the private respondents.

Learned advocate representing the municipality submits, upon instruction that, that the application of the petitioner for grant of sanction could not be proceeded further because of certain issues and because of the pendency of the civil suit.

As regards the issue of unauthorised construction, it has been submitted that the same is the subject matter of challenge in the pending Title Suit and, accordingly, the Municipality has refrained from taking further action in response to the complaint lodged by the petitioner.

Learned advocate representing the private respondents submits that a counter claim has been filed in the pending suit and the written statement has already been filed.

Upon hearing the parties and upon perusal of the materials on record it appears that a civil suit is pending consideration before the learned Court below. The issue of encroachment ought not to be left to be decided by the Municipality. Private rights of the parties can be decided by the competent civil forum and not by the municipality.

Accordingly, the issue of unauthorised construction made by way of encroachment of the private land of the petitioner cannot be decided by the municipality and will be decided in the pending Title Suit.

As regards the deficiencies in the application made for grant for sanction of building plan, the municipality

is directed to intimate the petitioner the defects/deficiencies so that the petitioner may cure the same.

The municipality shall intimate the petitioner specifying the defects in the application and the reasons for not processing the application for grant of sanction plan at the earliest but positively within a period of four weeks from the date of communication of this order.

Report filed by the Inspector-in-Charge, Bhadreswar P.S. and the affidavit-of-service be retained with the records.

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.)