

05-03-2024
Item No.32
Subrata
Bhattacharyya
AR(C)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

WPA No.24734 of 2023
Kamal Prasad Jaiswal
-vs-
The State of West Bengal & Ors.

Mr. Anupam Kumar Bhattacharyya
Mr. Ayan Mitra
Mr. Mritunjay Saha
Mr. Dilip Kumar Mondal ...for the petitioner

Mr. Suman Ghosh
Ms. Munmun Tewary ...for the State

Mr. Srijan Nayek
Ms. Rituparna Maitra ...for the Corporation

Leave is granted to file the supplementary affidavit.

The petitioner's objection (Annexure P5, p.31) against unauthorised construction made at the instance of the private respondent filed before the Kolkata Municipal Corporation is pending consideration.

It has been alleged that a multistoried building has been constructed over a thika property without obtaining any sanction. The petitioner claims to be the owner of the construction over the thika land.

None represents the private respondent. Affidavit of service and notice of upgradation are taken on record.

In view of the order that I propose to pass, none of the non-appearing respondents would be prejudiced if the writ petition is disposed of in the following manner.

As it appears that the representation of the petitioner objecting to the illegal and unauthorized construction is pending consideration at the end of the respondent-authorities, no useful purpose will be served by keeping the writ petition pending.

The writ petition is accordingly disposed of by directing the respondent no.7 being the Executive Engineer (Civil/Building), Borough VII Kolkata Municipal Corporation to consider and dispose of the petitioner's representation dated October 7, 2023 strictly in accordance with law by giving a reasoned decision, 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 reasoned decision once passed shall be communicated to all the necessary parties, including the petitioner forthwith.

A spot inspection shall be conducted to ascertain the nature and extent of the unauthorised construction.

In the event the said respondent is of the considered opinion that the construction has been made either in violation of the plan sanctioned or devoid of the sanctioned plan, then necessary steps shall be taken dealing with such unauthorized construction, in accordance with law.

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

It is made clear that this court has not entered into the merits of the petitioner's claim, and that all points are left open to be decided by the said respondent at the time of consideration of the petitioner's representation.

The petitioner is directed to forward a copy of the representation dated October 7, 2023 to the said respondent at the time of communication of the order of the court.

The writ petition stands disposed of. No order as to costs.

Certified copy of this order, if applied for, shall be made available to the parties.

[Amrita Sinha, J]

