

OD-3

ORDER SHEET
WPO No.9 of 2024
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

H. GHULAM MOHAMED & BROS. & ANR.
VERSUS
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:

The Hon'ble JUSTICE AMRITA SINHA

Date:15th January, 2024.

Appearance:
Mr. Rupak Ghosh, Adv.
Mr. Arindam Paul, Adv.
Mr. Bidish Ghosh, Adv.
....for the Petitioners.

Mr. Swapan Kr. Debnath, Adv.
Ms. Manisha Nath, Adv.
... for K.M.C.

Ms. Soma Chatterjee, Adv.
...for Private Respondent.

The Court:- Leave granted to the learned Advocate-on-record of the petitioners to correct the designation of the respondent no.3 in the cause title of the writ petition. The correct respondent shall be the Executive Engineer [Civil], Borough-VI, Kolkata Municipal Corporation.

Correction shall also be made in the designation of the respondent no.2 which should read as the Director General, Civil, Engineering Department instead of the Building Department.

The petitioners complain of illegal and unauthorized construction as well as encroachment of the public footpath at the behest of the private respondent in front of the premises no.20, Chowringhee Road, Ward No.46 of the Kolkata Municipal Corporation. Repeated objections filed before the Kolkata Municipal Corporation yielded no result.

Learned advocate representing the private respondent submits that business from the said alleged unauthorized construction is going on for more than a century. It has been submitted that there are similar structures in the entire stretch of Chowringhee Road.

Learned advocate representing the Corporation relies upon the instruction forwarded by the engineers of the Corporation which mentions that the site was inspected and it was found that an iron shed extended on the footpath from the property line exists. The matter has been informed to the Municipal Secretary for further direction.

As it appears that the objection filed by the petitioners is pending consideration before the authority, accordingly, no useful purpose will be served by keeping the writ petition pending.

The instant writ petition is disposed of by directing the Executive Engineer [Civil], Borough-VI of the Kolkata Municipal Corporation being the respondent no.3 herein to consider and dispose of the objection filed by the petitioners on 28.02.2023 strictly in accordance with law, after giving reasonable opportunity of hearing to the petitioners and all other necessary parties and pass a reasoned order within a period of twelve weeks from the date of communication of this order and communicate the reasoned order to the parties immediately thereafter.

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

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 unauthorized construction, in accordance with law.

The aforesaid respondent shall restrict the consideration of the objection 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.

It is made clear that this Court has not entered into the merits of the claim made by the petitioners and all points are left open to be decided by the aforesaid respondent at the time of consideration of the objection of the petitioners.

The petitioners are directed to forward a copy of the objection dated 28.02.2023 to the aforesaid respondent at the time of communicating the order of the Court.

Writ petition stands disposed of.

Instruction forwarded by the engineers, Borough-VI, Kolkata Municipal Corporation dated 10.01.2024 be retained with the record.

Affidavit of service filed in Court today is taken on record.

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

(AMRITA SINHA, J.)