

D/L24
04.03.2025
Rohit
ct.no.26

**FMA 292 of 2025
With
IA No: CAN 1 of 2025**

**Binoy Badal Dinesh Bagh Sangha Club
Versus
Rabindra Nath Das & Ors.**

Mr. Sukumar Ghosh
Ms. Moumita Ghosh

...for the Appellant

Mr. Ayan Poddar
Mr. Soham Dutta

...for the Respondent No.1

Appeal is at the behest of a private respondent in a writ petition and directed against the order dated January 16, 2025 passed in W.P.A. No. 31057 of 2024.

Learned Advocate appearing for the appellant submits that his client possesses a sanctioned building plan. The impugned order was passed ex parte. Name of his client stands mutated in the appropriate records.

Learned Advocate appearing for the writ petitioner submits that, the construction was made on a land recorded as barga. The appellant was served with the copy of the writ petition and chose not

to be represented when the writ petition was taken up for consideration.

Writ petition alleges unauthorized construction.

Considering the rival contentions of the parties, learned Single Judge directed the respondent no. 5 in the writ petition, within whose jurisdiction the immovable property fell, to consider the issue of unauthorized construction.

Impugned order was passed after the appellant was served with a copy of the writ petition. Appellant was absent on the date of the impugned order.

It is contended on behalf of the appellant that there is a suit for partition pending upon the private parties.

Suit for partition does not involve an issue as to unauthorized construction. Notwithstanding the pendency of a suit for partition, the issue of unauthorized is required to be decided and it must be decided.

It is contended on behalf of the appellant that there subsist a sanctioned building plan. Such contention is disputed on behalf of the private respondent. Such issue is left open to be decided by the respondent No.5.

The issue of unauthorized construction is required to be decided. The respondent no.5 will therefore decide such issue in terms of the impugned order dated January 15, 2025. Period to render such decision is extended for a period of three weeks from date. No doubt the respondent no.5 will afford a reasonable opportunity of hearing to the private parties before us before taking the decision on the issue of unauthorized construction. Respondent No.5 is at liberty to consider such documents and hear such parties that it deems necessary. Respondent No.5 will pass a reasoned order which the respondent no.5 will communicate to the parties it heard forthwith thereafter.

With the aforesaid observations FMA 292 of 2025 along with all connected applications stands disposed of.

All parties shall act on the Server Copy of this order duly downloaded from the Official Website of this Court.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)