

11.03.2025

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Ct. no.39

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**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

W.P.A. 9944 of 2024

**Tapati Pramanik
-Vs-
The State of West Bengal & ors.**

Mr. Sujit Bhunia
... for the petitioner

Mr. Jagabandhu Roy
Ms. Dipa Bhattacharya
... for the State-respondent

Mr. Atanu Chakraborty
Mr. K. C. Basu
... for the respondent nos.11 to 14

Affidavit of service filed on behalf of the petitioner is taken on record.

At the outset, Mr. Sujit Bhunia, learned Advocate appearing for the petitioner submits that the name of the respondent no.10 may be expunged since the postal endorsement records '*no such person in the address*'.

In view of such submission, let the name respondent no.10, Chandu Ghosh be expunged from the array of respondents.

Department is directed to act accordingly.

This writ petition has been filed for removal of illegal and unauthorized construction made by the private respondents over the land of the petitioner under plot No.160/250, L.R. in Mouza Rajpur, J.L. No.339, Khatian

No.183, within the jurisdiction of Kharagpur (Local) Police Station, District Paschim Medinipur without obtaining any prior permission. The petitioner contends that the petitioner by way of a registered deed of sale being No.I-2066 for the year 2020 dated 17.03.2020 purchased the aforesaid plot of land. The private respondents have encroached over the land of the petitioner and have made illegal and unauthorized construction. The petitioner by way of a representation dated 11th December, 2023 brought the said fact of illegal and unauthorized construction undertaken by the private respondents before the Pradhan, Khelar Gram Panchayat. However, no steps has been taken as yet. Hence, this writ petition.

Mr. Bhunia, learned Advocate for the petitioner submits that the Pradhan, Khelar Gram Panchayat, the respondent no.7 be directed to consider the representation of the petitioner since there is illegal and unauthorized construction undertaken by the private respondent without obtaining any sanction plan.

On the contrary, Mr. Atanu Chakraborty, learned Advocate representing the private respondent nos.11 to 14 submits that a civil suit has been filed by private respondent nos.8 and 9 against the petitioner and others before the Civil Judge, (Junior Division), Midnapur, Paschim Medinipore being Title Suit No.521 of 2021 wherein prayer has been sought for declaring the sale deed of the petitioner as illegal and void and the said suit

is pending for disposal. He also indicates that the deed being annexure P1 has not been executed in accordance with law. Furthermore, the entire dispute is civil in nature. The predecessor-in-interest of the respondent nos.11 to 14 is in possession of the said land as a refugee since long and the petitioner is not in possession of the land-in-question. Since the deed of sale of the petitioner has been challenged and the petitioner is not in possession, no right, title and interest over the land has accrued in favour of the petitioner to maintain the present application seeking for an order for demolition of the construction, if any, undertaken by the private respondents. He seeks for dismissal of the writ petition. He also submits that the private respondent nos.11 to 13 have also filed an application under Order I Rule 10 of the Code of Civil Procedure for impleading them as necessary parties in the suit.

Mr. Subrata Guha Biswas, learned Advocate for the State submits that since the matter is civil in nature, the prayer sought for in the writ petition should be dismissed summarily.

In reply to the aforesaid contentions of the private respondents as well as State-respondent, Mr. Bhunia, learned Advocate for the petitioner submits that even if the petitioner is a stranger as has been alleged, the authorities are under obligation to enquire regarding the unauthorized construction. The illegal construction, if

any, undertaken by any person, should be demolished and removed, in accordance with law. In support of his contention, he relies on the decision of the Hon'ble Supreme Court passed in ***Dipak Kumar Mukherjee -versus- Kolkata Municipal Corporation and others***, reported in **(2013) 5 SCC 336** as well as an unreported decision of this Court passed in WPA 740 of 2021 (*Smt. Banasri Mondal Vs. State of West Bengal & ors.*).

It is not in dispute that a civil suit being Title Suit No.521 of 2021 has been filed by respondent nos.8 and 9 seeking for declaration that the sale deed of the petitioner is illegal and void and should not be acted upon. Be that as it may, the civil rights are to be adjudicated by the civil court. However, whether the work of construction, if any, undertaken by the private respondents has been done following the mandate of law as provided under the Act should be enquired into since the illegal activities, if any, should not be allowed to be carried on. The petitioner has brought the facts of certain illegal construction to the notice of the concerned authority.

The Hon'ble Supreme Court in *Dipak Kumar Mukherjee (supra)* observed as follows :

"8. What needs to be emphasized is that illegal and unauthorised constructions of buildings and other structures not only violate the municipal laws and the concept of planned development of the particular area but also affect various fundamental and constitutional rights of other persons. The common man feels cheated when he finds that those making illegal and unauthorised constructions are supported by the people entrusted with the duty of preparing and executing master plan/development plan/zonal plan. The reports of demolition of hutments and jhuggi jhopris belonging to the

poor and disadvantaged section of the society frequently appear in the print media but one seldom gets to read about demolition of illegally/unauthorisedly constructed multi-storeyed structures raised by economically affluent people. The failure of the State apparatus to take prompt action to demolish such illegal constructions has convinced the citizens that planning laws are enforced only against poor and all compromises are made by the State machinery when it is required to deal with those who have money power or unholy nexus with the power corridors.

9. We have prefaced disposal of this appeal by taking cognizance of the precedents in which this Court held that there should be no judicial tolerance of illegal and unauthorised constructions by those who treat the law to be their subservient, but are happy to note that the functionaries and officers of Kolkata Municipal Corporation (for short “the Corporation”) have been extremely vigilant and taken steps for enforcing the provisions of the Calcutta Municipal Corporation Act, 1980 (for short “the 1980 Act”) and the Rules framed thereunder for demotion of illegal construction raised by Respondent 7. This has given a ray of hope to the residents of Kolkata that there will be zero tolerance against illegal and unauthorised constructions and those indulging in such activities will not be spared.”

The coordinate Bench of this Court in WPA 740 of 2021 observed as follows :

“The contention of the private respondents that the petitioner does not have any locus standi to move the instant writ petition is not acceptable. It is the bounden duty of all citizens to abide by the laws of the country and take all necessary steps to act in accordance with law. Any responsible citizen is always free to draw the attention of the concerned statutory authority seeking prevention of commission of any illegal activity including, unauthorized construction being carried on in a given premises. It is the noble duty of a law abiding citizen to intimate the controlling authority as regards any illegal act being committed or in the process of being committed. It is practically impossible for statutory authorities to keep track of all activities that are going on in the society. The general public acts as the eyes and ears of the authorities. On receipt of any information alleging commission of an illegal or arbitrary act, the authorities should verify the same and then act according to law. An objection raised by a stranger, alleging unauthorized construction will be maintainable to a limited extent only to check whether there has been any unauthorized construction, provided the same is not mala fide and not tainted with malice. Law is well settled that the Corporation may even take steps suo motu if any unauthorized construction is detected by them. Accordingly, the objection raised by the private respondents challenging the locus standi of the petitioner in filing the instant writ petition stands overruled.”

Considering the aforesaid proposition of law, the prayer made in the writ petition by the petitioner is very much maintainable.

In light of the above, the respondent no.7, the Pradhan, Khelar Gram Panchayat is directed to consider and dispose of the representation of the petitioners dated 11th December, 2023 by adopting the following procedure:

- (i) Cause an inspection on the property-in-question upon notice to the petitioners as well as private respondents. A report of such inspection along with sketch map be prepared, which shall be handed over to the parties.
- (ii) Thereafter the parties shall be heard upon notice and the representation of the petitioner dated 11th December, 2023 shall be disposed of by a reasoned order which shall be communicated to the parties within a week of passing of such orders.
- (iii) On the basis of materials transpiring during inspection and hearing, the proceedings shall be taken to its logical conclusion in terms of provisions of Section 23 of West Bengal Panchayat Act read with Rules.
- (iv) The entire exercise shall be completed within a period of two months from date of communication of this order.

The petitioners are directed to communicate this order to respondent no.7, the Pradhan, Khelar Gram Panchayat along with copy of the representation dated 11th December, 2023.

It is made clear that this Court has not gone into the merits of this writ petition.

Since affidavits have not been called for, the allegations made in the writ petition are deemed to be not admitted.

With the aforesaid directions, the writ petition being **WPA 9944 of 2024** stands disposed of.

All connected applications, if any, stand disposed of.

Interim order, if any, stands vacated.

There shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties on compliance of all necessary legal formalities.

(**Bivas Pattanayak, J.**)