

64 and 65
01.12.2023
Court No. 24
AGM

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

WPA 23838 of 2023

**The Emyrean Building Solutions
Private Limited & Anr.
-versus-
The Kharagpur Municipality & Ors.**

With

WPA 24321 of 2023

**Anup Kumar Bisoi
-Versus-
The Kharagpur Municipality & Ors**

**Mr. Supratik Roy
Ms. Akanksha Mukherjee
... For the petitioners in WPA 23838 of 2023
and for the respondents in WPA 24321 of 2023**

**Mr. Sudeep Sanyal
Mr. Sukanta Das
Mr. Chandrachur Lahiri
... For the petitioners in WPA 24321 of 2023
and for the respondents in WPA 23838 of 2023**

**Mr. Mrinal Kanti Ghosh
... For the Municipality.**

Emyrean Building Solutions filed the writ petition alleging illegal and unauthorized construction made by Anup Kumar Bisoi. Allegation is that construction has been made without leaving the mandatory side open spaces.

Anup Kumar Bisoi filed a separate writ petition alleging that Emyrean Building Solutions is making construction relying upon a sanctioned plan which was obtained in a fraudulent manner.

Anup Kumar Bisoi places reliance on the enquiry report of the Sub Assistant Engineer, Kharagpur Municipality in support of the submission that construction has been made by Emyrean Building Solutions in excess of the area sanctioned for construction.

Both the parties allege that the mandatory side open spaces have not been maintained at the time of raising construction.

Anup Kumar Bisoi approached this Court on an earlier occasion by filing writ petition being WPA 11352 of 2022 and by order dated 23rd September, 2022 the Court directed Kharagpur Municipality to consider and dispose of the objection filed by Anup Kumar Bisoi in accordance with law after giving opportunity of hearing to all the parties and if unauthorized construction is detected, then to take necessary steps to deal with the same.

Anup Kumar Bisoi submits that as there is already a finding from the Sub Assistant Engineer that construction has been made in excess of the area sanctioned, the Municipality ought to take steps to deal with the said unauthorized construction.

Learned advocate representing the Kharagpur Municipality submits that fresh spot inspection is required for ascertaining facts from both the parties. It has further been submitted that as a civil suit is pending consideration in between the parties before the learned civil Court, the municipality will not be in a position to ascertain the measurement of the pathway, which is disputed and pending adjudication in the suit.

Upon hearing the parties, it appears that both the writ petitioners make allegation of unauthorized construction against each other. The municipality conducted an enquiry and a report was prepared by the Sub Assistant Engineer. On a perusal of the report, it is

not very clear as to whether the mandatory side open spaces have been maintained by the parties at the time of raising construction.

To decide the issue and to resolve the dispute once and for all, the municipality is directed to conduct a fresh spot inspection upon giving prior notice to both the parties to ascertain the exact nature and extent of unauthorized construction. Measurement shall be taken to ascertain as to whether the mandatory side open spaces have been maintained or not.

If it appears that the mandatory side open spaces have not been maintained and there is deviation at the time of making construction, then necessary steps to deal with the same in accordance with law shall be taken by the municipality.

The municipality shall conduct the spot inspection at the earliest but positively by 15th December, 2023 and circulate the report of spot inspection amongst the parties.

A hearing shall be allowed by the municipality and final order be passed within a period of sixty days from the date of circulation of the spot inspection report.

Pending consideration of the objections filed by the parties, the municipality shall ensure that unauthorized construction in any manner whatsoever is not carried out by either of the parties.

Learned advocate representing the respective parties are directed to forward the representation of the petitioners to the municipality at the time of communicating the order of the Court.

The municipality is specifically restrained from entering into or deciding the issue of title or any private dispute in between the parties. Spot inspection and consideration shall be restricted to decide the issue of unauthorized construction only.

Both the writ petitions stand 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.)