

(2018) 05 CAL CK 0216

Calcutta High Court

Case No: Writ Petition5943 (W) of 2018

Sunil Chowdhury

APPELLANT

Vs

Howrah Municipal Corporation &
Ors.

RESPONDENT

Date of Decision: May 16, 2018

Acts Referred:

- Constitution Of India, 1950 - Article 226

Hon'ble Judges: DEBANGSU BASAK, J

Bench: Single Bench

Advocate: Debjit Mukherjee, Susmita Chatterjee, Dipanwita Ganguly, Haradhan Banerjee, Amitava Pain, S. Datta, N. C. Bihani, Papiya Banerjee Bihani

Final Decision: Dismissed

Judgement

The petitioner complains of unauthorized construction by the private respondents. The Howrah Municipal Corporation and the private respondents are represented. Learned Advocate for the petitioner submits that, despite the petitioner having filed a suit for declaration and seeking a decree for temporary injunction with regard to the unauthorized construction and despite an order of status quo being passed by the Civil Court, the private respondent is continuing with construction which is unauthorized.

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The Howrah Municipal Corporation is not a party to the suit. Consequently, the petitioner is not in a position to seek relief with regard to unauthorized construction in relation to the Howrah Municipal Corporation in the suit. Unauthorized construction cannot be allowed to go unabated. His client

cannot be rendered remediless. It appears from the record that, the petitioner as the plaintiff had filed a suit being Title Suit No. 986 of 2015 before

the 2nd Court of the learned Civil Judge, Junior Division at Howrah. The prayers in the plaint of the suit are as follows:

â€œa.) A decree for declaration of title of the plaintiffs in the suit property.

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b). Permanent Injunction restraining the defendant and his men and agents from disturbing and/or interfering the plaintiffs in peaceful enjoyment and

possession in the suit property

c) a temporary injunction with adinterim relief restraining the defendant, his men and agents from proceeding with unauthorized and illegal

construction forcibly without any sanction in any part of the suit property in any manner till disposal of the suit and rule.

d) A Permanent injunction in mandatory from directing upon the defendant to restore the position of the suit property by removing the illegal structure

which might be raised unauthorizedly in the mean time.

e) All cost of the suit.

f) Any other further relief/relieves the plaintiffs may be found entitled to under law and equity and the facts prove in this case.â€

It further appears that, an application for injunction filed at the behest of the petitioner. By an order dated June 19, 2015, the Civil Court was pleased

to direct the parties to the suit to maintain status quo in respect of the nature and character and possession of the suit property. Such interim is

subsisting. The issue as to whether there is unauthorized construction at the premises concerned or not is an issue in the suit raised at the behest of the

petitioner. It would be inappropriate for a Writ Court to pronounce on such issue on the plea that, the Corporation is not a party to the suit. The suit is

of the petitioner. The petitioner cannot be allowed to take advantage of a situation, which is of his own doing.

In such circumstances, I am not in a position to exercise discretion under Article 226 of the Constitution of India in favour of the petitioner. W.P. 5943

(W) of 2018 is dismissed without any order as to costs. It is clarified that none of the observations made in this order will prejudice any of the parties

to the pending suit. Urgent certified website copy of this order, if applied for, be made available to the parties upon compliance of the formalities.