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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 5530 of 2021
(Via Video Conference)

Manab Bandyopadhyay
Vs.
Chairman, Naihati Municipality & Ors.

Mr. Avirup Chatterjee
... For the petitioner.

Affidavit of service filed in Court today is taken on record. On a perusal of the said affidavit it appears that there is a doubt as to whether the respondents have received the intimation that the matter will appear in the list on 10th June, 2021 (today). It, however, also appears from the said affidavit of service that copy of the writ petition has been served on the respondents. After hearing the petitioner and in view of the order I propose to pass I am inclined to take up the matter in the absence of the respondents as this will neither abridge or takeaway any right of the respondents.

The petitioner alleges illegal construction by the respondents no. 5, 6 and 7 on the municipal road for which the ingress and egress from the petitioner's premises to the municipal road is infringed. The petitioner filed an application under section 144(2) of the Code of Criminal Procedure, 1973 (in short, Cr. P.C.), wherein an

order was passed on 18th January, 2021, restraining the opposite parties in the said application, being the respondents no.5 and 6, from changing the nature and character of the property in question without due process of law. The Officer-in-Charge, Naihati Police Station was directed to inquire into the matter and file a report. The petitioner has also filed a complaint before the Chairman of Naihati Municipality, being the respondent no.1, alleging illegal construction by the respondents no.5, 6 and 7. So far as this complaint is concerned, the municipal authorities are obliged to bring the same to a logical conclusion irrespective of the fact whether the proceeding under section 144 of the Cr.P.C. is pending or not.

The respondent no.1 is directed to dispose of the petitioner's representation dated 1st February, 2021 appearing at pages 57 to 59 of the writ petition within a period of four (4) months from date after affording the parties a reasonable opportunity of hearing. The respondent no.1 shall also pass a reasoned order taking into consideration as to whether the land in which the illegal construction is alleged to have been made is a part of the municipal road vested on the Naihati Municipality. The respondent no.1 in the event finds that the construction has been made on a part of the municipal road shall take appropriate steps as permissible in law for

removing such encroachment. The Chairman of Naihati Municipality (respondent no.1) shall communicate the order that may be passed by him to the parties within seven days from the date of passing of such order.

It is made clear that this Court has not gone into the merits of the matter and the respondent no.1 shall be free to decide the issues involved in the petitioner's complaint without being any way influenced by this order.

Since the respondents remain unrepresented, the petitioner shall immediately serve a server copy of this order and the respondent no.1 shall act on the basis of such server copy of this order without insisting upon the certified copy of this order.

Nothing further remains to be adjudicated in the writ petition and the same is accordingly disposed of without any order as to costs.

Since I have not called for any affidavits, the allegations contained in the writ petition are deemed to have not been admitted by the respondents.

Urgent photostat certified copy of this order, if applied for, is to be given to the parties upon compliance with the requisite formalities.

(Arindam Mukherjee, J.)

