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

**WPA 24206 of 2019
 (Via Video Conference)**

**Anita Das
-Vs-
English Bazar Municipality & Ors.**

Mr. Srisanya Bandopadhyay,
 Mr. Gangadhar Das,
 Mr. Swarvanu Saha,
 Mr. Santanu Sett,

... for the petitioner

Mr. Amal Krishna Saha,
 Mr. Debnath Mahata,

... for the Municipality

Mr. Kamalesh Jha,
 Mr. Biswajit Tiwari,
 Ms. Srabani Biswas,

... for the respondent nos. 5 & 6

The order dated 25th October, 2019 passed by the Chairman of the English Bazar Municipality, allegedly in compliance of the direction of this Court passed on September 25, 2019 in W.P. 17690(W) of 2019, is under challenge in the instant writ petition.

The earlier writ petition was filed by the petitioner praying for a direction upon the English Bazar Municipality to take steps for demolition of the unauthorized construction carried on by the private respondents. The principal allegation was that the mandatory side spaces and front open space, as prescribed in Rule 50 of the West Bengal Municipal

(Building) Rules, 2007 was not followed by the private respondents at the time of making the construction. The Court directed the English Bazar Municipality to take a decision with regard to the complaint filed by the petitioner within a stipulated time after giving an opportunity of hearing to the parties. The Court further directed that if it was found that the private respondents constructed the building without leaving the mandatory open spaces, as stipulated under Rule 50 of the aforesaid Rules, then the Municipality would take further steps in accordance with law. The private respondents were restrained from carrying on any construction or further construction in respect of the building in question till a decision is taken by the Municipality.

The private respondents submit that all construction over the said plot of land is over and no construction is being made by them at present.

It appears from the impugned order that a hearing was conducted and an order had been passed by the Chairman of the Municipality by holding that the matter was sub-judice before higher authority and the complaint filed by the petitioner should not proceed further and hence rejected.

The observation of the Chairman of the English Bazar Municipality is that the petitioner had purchased a three storied building in the year 2014 adjacent to the northern side of the holding in question of the private respondents, but did not mutate her name as per the Act. Further contention was that the petitioner had filed a case before the Sub-Divisional Executive Magistrate, Malda under Section 147 Cr. P. C. over the self-same matter against the private respondents in respect of the

holding in question and the said case being Case No. 211/P/2018 is pending consideration before the Court.

In view of the above, the Chairman of the Municipality was of the opinion that the matter was sub-judice and accordingly proceeded to reject the representation of the petitioner.

It appears from the order of the Chairman that he has proceeded in the matter on a completely different premise. The court directed the Chairman to consider the representation of the petitioner. The representation of the petitioner was with regard to violation of the provisions of Rule 50 of the West Bengal Municipal (Building) Rules, 2007. The same does not have any relation with either mutation or the pending case under Section 147 Cr.P.C. The Chairman of the Municipality was required to inspect the property and come to a specific finding whether the mandatory open spaces, as prescribed in Rule 50 of the aforesaid Rules has been maintained by the private respondents at the time of making the construction. The same has not been done. The Chairman ought to have appreciated that mutation of the property and the proceeding pending before the court below does not have any bearing with regard to the unauthorized construction being made in the said premises.

Accordingly, the impugned order dated 25th October, 2019 passed by the Chairman, English Bazar Municipality is set aside. The matter is remanded back to the Chairman of the English Bazar Municipality to take steps strictly in accordance with the direction passed by this Court on 25th September, 2019 within a period of six weeks from the date of communication of a

copy of this order, after giving an opportunity of hearing to the petitioner and the private respondents.

The private respondents are restrained from carrying on any construction or further construction in respect of the building in question till an order is passed by the Chairman of the Municipality, as directed hereinabove.

WPA 24206 of 2019 stands disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all legal formalities.

(Amrita Sinha, J.)