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15.02.2021.
d.p.

**W.P.A 11415 of 2020
(Via Video Conference)**

**Smt. Rita Manna
-versus
Howrah Municipal Corporation & Ors.**

**Mr. Animesh Das,
Mr. Dipankar Ghosh.
...For the Petitioner.**

**Mr. Asim Nati,
Mr. Debabrata Mondal,
Ms. Sreetama Neogi.
...For the Respondent
Nos. 10, 11 and 12.**

**Mr. Sandipan Banerjee,
Mr. Ankit Sureka.
...For the HMC.**

Affidavit-of-service filed in Court today is taken on record.

The petitioner alleges illegal and unauthorized construction being carried on by the private respondents in the Premises No. 3/6, Ambika Kundu Lane, P.O.-Santragachi, P.S.-Chatterjee Hat, District – Howrah, Pin-711104.

The petitioner approached this Court on an earlier occasion by filing a writ petition being W.P. No.18199 (W) of 2018 alleging illegal and unauthorized construction by the private respondents. The said writ petition was disposed of by the Court on 20th September, 2018 directing the Howrah Municipal Corporation to dispose of the proceedings initiated

under Section 177(1) of the Howrah Municipal Corporation Act, 1980 within a specified time.

It has been submitted that the Howrah Municipal Corporation issued a self-demolition notice upon the private respondents. On receiving the said notice, though certain portions of the unauthorized construction have been demolished by the private respondents but still there are other unauthorized constructions in the said premises.

It has been alleged that the private respondents have constructed a Septic Tank in an unauthorized manner from which foul smell is emitting and dirty water is overflowing creating nuisance in and around the area.

The petitioner again made representation before the Howrah Municipal Corporation on 14th November, 2018 followed by a reminder on 7th November, 2020.

The petitioner alleges that none of the representations have been considered by the respondent authorities till date.

The learned advocate appearing for the private respondents submits that the writ petition is barred by the principle of *res judicata* as the petitioner had approached this Court earlier with the selfsame prayers.

It has also been submitted that there is a provision for execution of the order passed by the Corporation under Section 177(1) of the Howrah Municipal Corporation Act, 1980 and the petitioner

ought not to have rushed to the writ court at the very first instance.

The learned advocate appearing for the Howrah Municipal Corporation submits, upon instruction, that notice of self-demolition was issued upon the private respondents and there is no instruction as to whether the private respondents have acted in accordance with the said notice or not.

The submission of the private respondents regarding non-maintainability of the writ petition on the ground of *res judicata* does not appeal to the court. It appears that previously the writ petition was filed complaining of unauthorized construction of certain portions of the said building. Presently, allegation is regarding construction of the Septic Tank, which has been constructed in an unauthorized manner. The prayer made in the earlier writ petition was in respect of an entirely separate cause of action. The cause of action for filing the instant writ petition is completely different and accordingly the writ petition at the instance of the petitioner is maintainable.

In view of the aforesaid submission, the instant writ petition is disposed of by directing the Howrah Municipal Corporation to take necessary steps for consideration of the representation made by the petitioner alleging unauthorized construction on 14th November, 2018 followed by a reminder dated 7th November, 2020 strictly in accordance with law, after giving an opportunity of hearing to all the necessary parties, including the petitioner, within a period of twelve weeks from the date of communication of a copy of this order. The said respondent shall pass a reasoned

order and communicate the same to all the necessary parties including the petitioner immediately thereafter.

It is made clear that this Court has not entered into the merits of the claim made by the petitioner and all points are left open to be decided by the aforesaid respondent at the time of consideration of the representation of the petitioner.

W.P.A. 11415 of 2020 is disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Amrita Sinha, J.)