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02.09.2022
d.p.

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

W.P.A 1760 of 2022

**Sri Satadal Ghosh & Anr.
-versus
The Kolkata Municipal Corporation & Ors.**

**Mr. Kallol Basy,
Mr. Pallab Mitra,
Ms. Anjana Banerjee,
Mr. Koushik Bhatta,
Ms. Mahasweta Paramanik,
Ms. S. Roy Chowdhury.
...For the Petitioner.**

**Mr. Barin Banerjee,
Mr. Debangshu Mondal.
...For HMC.**

**Mr. Sandip Kumar Bhattacharyya,
Mr. Vijay Agarwal,
Mr. Bharat Ch. Simal,
Mr. Prasant Kumar Tripathi,
Ms. Ifrah Rahman.
...For the Respondent
Nos. 5 and 6.**

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

The petitioner prays for a direction upon the Kolkata Municipal Corporation for consideration of the representation filed in January 2022 with regard to the illegal and unauthorized construction as well as change of user of the premises.

According to the petitioner, the premises in question is meant for residential use. The private

respondents are using a portion of the said premises for running a Polyclinic without obtaining any permission from the Kolkata Municipal Corporation with regard to change of user the said premises.

It is the further case of the petitioner that the Polyclinic is being run contrary to the provisions of the West Bengal Clinical Establishment (Registration, Regulation and Transparency) Act, 2017, the Bio-Medical Waste (Management and Handling) Rules, 1998 and the provisions of the Kolkata Municipal Corporation Act, 1980.

The respondent Nos. 5 and 6 raised a preliminary objection with regard to the maintainability of the writ petition before this Court.

It has been submitted that the petitioner has already filed a Title Suit being No. 776 of 2021 before the Learned Civil Judge, Senior Division, 5th Court at Alipur with the same prayer as has been made in the present writ petition.

An order has already been passed by the Learned Civil Judge and any order passed by the writ Court will amount to modification of the order that has been passed by the Learned Civil Judge.

With regard to the submission of the private respondents apprehending modification of the order, this Court is of the opinion that the order of the Civil Court is only restricted to the parties to the suit. The Kolkata Municipal Corporation is not a party to the said proceeding that is pending between the private parties.

It is the duty of the Kolkata Municipal Corporation to act in accordance with the statutory provision.

The petitioner has filed a representation and the same is pending consideration.

In view of the above, the instant writ petition is disposed of by directing the Executive Engineer (Building), Borough No.-XI, Unit-2, Kolkata Municipal Corporation being the respondent No.4 herein to take into consideration the representation filed by the petitioner on 18th January, 2022, strictly in accordance with law, after giving an opportunity of hearing to the petitioner, private respondents and all other necessary parties and to pass a reasoned order and communicate the same to the parties.

Steps shall be taken in the matter at the earliest, but positively within a period of twelve weeks from the date of communication of a copy of this order.

The learned advocate appearing for the petitioner is directed to forward a copy of the representation dated 18th January, 2022 to the aforesaid respondent at the time of communicating the order of the Court.

The writ petition stands 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.)