

16.08.2022  
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AN/Ct. No.24

**WPA 2147 of 2022**

**Ashok Kumar Jana @ Ashok Jana  
versus  
The Contai Municipality & ors.**

Mr. Sounak Bhattacharya  
Mr. Sounak Mondal

... for the petitioner

Mr. Soumen Kumar Dutta  
Ms. Arpita Kundu

... for respondent No. 5

None appears on behalf of the Contai Municipality despite service of notice. Affidavit of service filed in Court is taken on record.

The petitioner is aggrieved by the opinion of the Chairperson of the Board of Administrators of the Contai Municipality dated 09.11.2021.

It is mentioned that initially one joint plan and holding was issued vide plan No. 164/07-08 dated 15.12.2007 in the names of the parties i.e. Ashim Kumar Jana, Ajit Kumar Jana and Ashok Kumar Jana and the holding number was 272/521. Thereafter, Ashim Kumar Jana applied for another plan which has been sanctioned vide plan No. 521/14-15 on 31.03.2015 and a separate holding number has been issued being 560/272(A) over the joint sanctioned plan.

But the second plan and holding has been issued without partition in between Ashim Kumar Jana, Ajit Kumar Jana and Ashok Kumar Jana.

Fact remains that there is a registered deed of partition in between the parties where the shares of the parties have been mentioned. The partition has not been done by metes and bounds.

Initially a plan was sanctioned in the name of all the parties in the year 2007 and the parties have acted in accordance with law and in terms of the said sanctioned plan made construction thereon.

On the basis of the registered partition deed, the private respondent, Ashim Kumar Jana applied for a separate plan which stood sanctioned on 31.03.2015.

According to the petitioner, as the partition was not effected by metes and bounds, accordingly, the Municipality could not have sanctioned plan individually in favour of the parties in respect of an identifiable area in the said joint property.

It has been submitted that the area which will be allocated to the parties is yet to be decided and accordingly the Municipality cannot take a decision to sanction plan in respect of a particular area in favour of an individual party.

Learned counsel for the private respondent submits that as there is a registered deed of partition existing since the year 1970, accordingly, the Municipality could not have sanctioned the plan jointly in favour of the parties.

It is however submitted that the plan which was sanctioned in favour of Ashim Kumar Jana in March, 2015 has expired and no construction has been made relying on the same.

It has further been submitted that there is a registered deed of partition but the said partition was not effected by metes and bounds. There is only a declaration of shares but the shares *per se* to be allocated to the parties are yet to be decided.

The Municipality could not have sanctioned plan in favour of any of the parties individually for making construction over the property which is yet to be partitioned by metes and bounds. In any joint property, prior to partition, every co-owner has right over each and every portion of the property.

As the plan sanctioned in favour of Ashim Kumar Jana in 2015 has already expired, accordingly, no construction can be made on the basis of the same.

In the event, the Contai Municipality intends to issue fresh sanction plan in favour of any of the parties, the same shall be done upon notice to the parties. The Municipality is restrained from sanctioning individual plan in favour of any of the parties till there is a formal partition by metes and bounds in between the parties.

If the parties intend to settle the disputes amicably between them and apply before the Municipality, then the

prayer of the parties shall be considered upon giving prior notice of hearing to the parties.

The writ petition stands disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties on completion of usual formalities.

**(Amrita Sinha, J.)**