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02.08.2022
d.p.

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

W.P.A. 8541 of 2022

**Chinmoyee Nandi & Anr.
-versus
The Arambagh Municipality & Ors.**

**Mr. Supriya Chattopadhyay,
Mr. Sudip Kumar Maiti.
...For the Petitioners.**

**Mr. Dhananjay Banerjee,
Ms. Ankita Dey.
...For the Respondent No.6.**

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

The petitioners allege illegal and unauthorized construction at the instance of the private respondent No. 7.

The petitioners rely upon a measurement sheet prepared by the surveyor of the Arambagh Municipality on 31st January, 2022 in the presence of the petitioners as well as the respondent No.7.

The premises of the petitioners as well as the adjacent premises of the respondent No.7 is clearly demarcated in the said measurement sheet.

The petitioners are primarily aggrieved by the act of the respondent No. 7 in making construction without leaving the mandatory side open spaces.

From the drawing that is made in the measurement sheet, it appears that the petitioners have left 2ft 10 inches and at places 4 ft as the side open space in the east side of the plot of land whereas the respondent no. 7 has left 3.4 ft. and 2.4 ft. open space in the west side of the said land. There is a boundary wall separating the two plots of land.

The Municipality was of the opinion that the construction was made as per the amicable settlement made between the parties who are relatives of each other.

The respondent no. 7 initially made construction without maintaining the mandatory side open spaces when the petitioners herein did not raise any objection.

The moment the petitioners started raising construction on good faith and in terms of the amicable settlement, the respondent no. 7 objected to the same.

The Sub-Assistant Engineer of the Arambagh Municipality has permitted the petitioners herein to construct upto the G+2 level and has also directed the respondent no. 7 herein to submit an undertaking that no construction will be made in deviation of the West Bengal Municipality Building Rules and Regulations.

The respondent no. 7 challenged the order passed by the Sub-Assistant Engineer on 23rd March, 2022 by filing a writ petition being WPA 6218 of 2022 which stood disposed of by this Court on 27th April, 2022 by directing the Board of Councillors of the Arambagh Municipality to take steps in accordance with the provision of Section 218 of the West Bengal Municipal Act, 1993.

The order of the Sub-Assistant Engineer dated 23rd March, 2022 has already been set aside by the Court.

As it appears that admittedly there is deviation in maintaining the statutory side open spaces by both the parties, accordingly, the Arambagh Municipality is directed to take appropriate steps in accordance with the provisions of Section 218 against the persons responsible namely the petitioners as well as the respondent no. 7 for making construction without maintaining the side open spaces, as required in law.

A decision shall be taken in the matter by the Board of Councillors of the Arambagh Municipality at the earliest but positively within a period of twelve weeks from the date of communication of a copy of this order.

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.)