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29.08.2022  
d.p.

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

**W.P.A 19613 of 2022**

**Md. Mohobub Hossain  
-versus  
Burdwan Municipality & Ors.**

**Mr. Uttiya Ray,  
Mr. Arnab Mondal.  
...For the Petitioner.**

**Mr. Debjit Mukherjee,  
Ms. Susmita Chatterjee.  
...For the State.**

**Mr. Subhasis Bandopadhyay.  
...For the Municipality.**

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

The petitioner is aggrieved by the act of the Burdwan Municipality in fixing the demolition programme on 30<sup>th</sup> August, 2022 at 10.30 A.M. in respect of the unauthorized construction made in the holding No. 445/1 at Bahirsarbamongala Para under ward no. 2 of Burdwan Municipality.

The aforesaid order was passed in accordance with the direction passed by this Court on 20<sup>th</sup> July, 2022 in WPA 8718 of 2021 (Chowdhury Abul Hasnat & Anr. -vs- The State of West Bengal & Ors.).

Though the complainant is a party in the instant writ petition, a copy of the writ petition is yet to be served upon him.

It appears from the submissions made on behalf of the parties that the order of demolition was passed by the Executive Officer, Burdwan Municipality on 9<sup>th</sup> February, 2021.

The petitioner submits that an appeal has been preferred against the said order of demolition on 22<sup>nd</sup> August, 2022 before the Learned Civil Judge (Junior Division), 2<sup>nd</sup> Court, Purba Bardhaman being Misc. Case No. 60 of 2022.

The matter was put up before the Learned Court on 23<sup>rd</sup> August, 2022 and the matter has been fixed for further consideration on 2<sup>nd</sup> December, 2022.

The petitioner submits that an application for stay has also been filed in connection with the appeal. The stay application is pending consideration.

It is the submission of the petitioner that if the order of demolition is executed, then the petitioner will be non-suited as the appeal and the stay application are yet to be taken up for consideration by the learned Court below.

Learned advocate appearing for the Municipality submits that the petitioner preferred the appeal after the demolition programme was fixed and intimated to him.

It has been submitted that the petitioner ought to have moved the Learned Court below for necessary order of stay rather than approach this Court under Article 226 of the Constitution of India.

It has further been submitted that the demolition programme has been fixed in compliance with the direction passed by this Court in the matter of Chowdhury Abul Hasnat (*supra*).

It appears from the submissions made on behalf of the parties that the appeal against the order of demolition is pending consideration before the competent Court.

The stay application has been filed and the same is also pending consideration.

For the ends of justice, the Burdwan Municipality is directed to keep the demolition programme which is fixed on 30<sup>th</sup> August, 2022 in abeyance for a limited period upto 9<sup>th</sup> September, 2022.

In the event, the petitioner fails to produce any order of stay from the competent Court, it will be open for the Municipality to proceed in accordance with the demolition programme issued by the Municipality on 10<sup>th</sup> August, 2022.

The Learned Court below is directed to decide the application for stay on merits, without granting any unnecessary adjournment to either of the parties.

It is made clear that this Court has not entered into the merits of the order of demolition or the demolition programme and the Learned Court below shall decide the entire matter on merits without being influenced by any observation made hereinabove.

The report filed by the Inspector-in-Charge, Burdwan Municipality, Burdwan Police Station, Purba Bardhaman dated 28<sup>th</sup> August, 2022 be taken on record.

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.)**