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14.12.2022
d.p.

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

W.P.A 23235 of 2022

**Sabu Ash @ Tablu Ash
-versus
The State of West Bengal & Ors.**

**Mr. Asis Bhattacharyya,
Mr. B. Mitra.
...For the Petitioner.**

**Mr. Swapan Kumar Debnath,
Mr. Gopal Chandra Das,
Mr. Debangshu Mondal.
...For KMC.**

**Mr. Tapan Kumar Mukherjee,
Mr. Benazir Ahmed.
...For the State.**

**Mr. Pannalal Bandopadhyay.
...For the Respondent No.7.**

The petitioner, a tenant under the private respondents, is not getting water supply on account of the old/defective G.I. service pipe in the premises.

The inspection report of the Executive Engineer (West) dated 31st May, 2022 reveals that there is one filtered water connection from the Kolkata Municipal Corporation main pipe at the subject premises. The G.I service pipe of the premises no. 134A, Sarat Bose Road goes through the premises no. 134D, Sarat Bose Road. Kolkata Municipal Corporation filtered water supply is sufficient at the ferrule point of the said connection.

The occupiers of the premises no. 134A, Sarat Bose Road are not getting water due to the old/defective G.I. service pipe.

Learned advocate appearing for the petitioner submits that his client is ready and willing to repair the old and defective service pipe at his own cost and he will not pray for reimbursement of the expenses from the rent paid.

Learned advocate appearing for the private respondents opposes the prayer of the petitioner.

An issue has been raised with regard to the maintainability of the writ petition before this Court.

It has been submitted that the petitioner ought to approach the Rent Controller in accordance with the provisions of the West Bengal Premises Tenancy Act, 1997.

Reliance has been placed on the judgment delivered by this Court in the matter of Madhulata Kankani & Ors. -vs- Kolkata Municipal Corporation & Ors. reported in 2008 (2) Cal Law Times 175 in support of the submission that the writ petition will not be maintainable as the matter involves private disputes between the landlord and the tenant.

Learned advocate appearing for the Kolkata Municipal Corporation relies upon the inspection report dated 31st May, 2022 mentioning that filtered water connection from the Kolkata Municipal Corporation main pipe exists at the subject premises.

On a perusal of the inspection report it appears that, though water connection exists but the subject premises is not getting the water supply as the G.I. service pipe is an old and defective one.

Learned advocate appearing for the private respondents admits that they are also not getting water from the said connection.

Section 234(3) of the Kolkata Municipal Corporation Act, 1980 provides that the Municipal Commissioner shall, for the purpose of securing, so far as is reasonably practicable, a sufficient supply of wholesome water for domestic purpose exercise his powers, requiring the owner of such house to provide supply of water thereto.

In the present case, though there is an existing ferrule but due to old and defective service pipe, the premises is left without any water.

In *Madhulata Kankani (supra)* there were several disputes in between the parties. In such a situation, the Court directed the parties to apply before the competent forum and the writ petition was held to be not maintainable.

In the instant case, the Court does not find any dispute between the parties with regard to the non-availability of water in the subject premises. Both the parties are not getting water.

It appears that the private respondents, who reside at a separate premises, are adopting the dog in a manger policy and deliberately not allowing the

petitioner to repair the defective and old service connection.

Resistance on the part of the private respondents to repair the old and defective service connection thereby preventing the petitioner to get supply of wholesome drinking water will infringe the fundamental right of the petitioner guaranteed under Article 21 of the Constitution of India.

The private respondents cannot cause impediment to the petitioner to receive wholesome water at the subject premises from the existing ferrule.

It will be open for the petitioner to approach the Corporation with regard to the formalities that are required to be complied for changing/repairing the old/defective G.I. service pipe.

The Corporation shall ensure that water from the existing ferrule is available in the premise no. 134 A, Sarat Bose Road.

The entire cost of repairing the service pipe and the cost of repairing any damage caused to the internal pathway of the subject premises at the time of repairing the service pipe shall be borne exclusively by the petitioner without insisting upon any reimbursement from the landlords.

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.)