

01
25.11.2022
d.p.

**Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction**

W.P.A 2905 of 2022

**Partha Roy
-versus
The State of West Bengal & Ors.**

**Mr. Debabrata Karan,
Mr. Debopriyo Karan.
...For the Petitioner.**

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

None appears on behalf of the respondents in spite of service.

The petitioner complains of illegal and unauthorized construction of a toilet by Asit Das, respondent No.10.

In response to the objection filed by the petitioner, the Municipality took up the issue and requested the private respondent to make necessary changes so that the petitioner is not troubled or inconvenienced by the foul odour from the toilet that has been constructed by the side of the petitioner's premises without obtaining any permission from the Municipality.

It appears from the documents annexed to the writ petition that the Chairman of the Municipality

directed both the parties to appear for a hearing on 22nd August, 2022 to have a discussion on the matter.

Learned advocate appearing for the petitioner submits that on the said date the private respondent did not appear in the hearing.

The matter has not yet been resolved by the Municipality.

In the absence of the learned advocate appearing for the Municipality and the private respondent, it is not possible for the Court to decide the issue conclusively.

In view of the order that I propose to pass, none of the parties will be prejudiced if the writ petition is disposed of in the following manner.

The writ petition is accordingly disposed of by directing the respondent no.4 being the Board of Councillors of Mal Municipality to consider and dispose of the representation made by the petitioner strictly in accordance with law, after giving an opportunity of hearing to all the necessary parties including the petitioner within a period of eight weeks from the date of communication of a copy of this order. The said respondent shall pass a reasoned order and communicate the same to all the necessary parties including the petitioner immediately thereafter.

In the event the aforesaid respondent is of the considered opinion that the construction has been made either in violation of the plan sanctioned or devoid the sanction plan, then necessary steps shall be

taken to deal with such unauthorized construction, in accordance with law.

The aforesaid respondent shall restrict the consideration of the representation with regard to unauthorized construction only and not enter into or decide any private dispute of the parties regarding right, title and interest in respect of the aforesaid land.

It is made clear that this Court has not entered into the merits of the claim made by the petitioner and all points are left open to be decided by the aforesaid respondent at the time of consideration of the representation of the petitioner.

The petitioner is directed to forward a copy of the representation dated 19th July, 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.)