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d.p.

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

W.P.A. 3152 of 2020

**Lakshmi Kanta Jana & Anr.
-versus
The State of West Bengal & Ors.**

**Mr. Rabindranath Mahata.
...For the Petitioners.**

**Ms. Sudipa Roy.
...For the State.**

**Mr. M. Thakur,
Mr. Swarup Kumar Ghosh.
...For the Municipality.**

Report filed by the Municipality and the exception thereto is taken on record.

The petitioners are aggrieved by the decision taken by the Councillors of Ghatal Municipality on 16th January, 2020 by opining that there is extension of only 5 inches in the eastern side of the sunshade constructed by the private respondents.

The Councillors of the Municipality directed that the sunshade which extended more than the approved building plan (5 inches) be demolished.

In support of the aforesaid contention, learned advocate appearing for the Municipality has filed a report and referred to a resolution adopted by the Board of Councillors of the Municipality on 29th October, 1997 that as the area in question is a flood

affected area, accordingly, minimum 2 ft.10 inches may be the permissible gap between the two premises.

Though the copy of the resolution has not been annexed to the report, but the same has been handed over to the Court as well as to the learned advocate appearing for the petitioners in Court today.

Learned advocate appearing for the petitioners refers to Rule 50 of the West Bengal (Building) Rules, 2007 and submits that the minimum open space to be maintained for residential house at the rear is 3 meters.

It has been submitted that the disputed structure has not maintained the statutory rear open space. The open spaces in the front and in the two sides have also not been maintained.

None appears on behalf of the person responsible for making construction.

On a perusal of the report filed by the Municipality and upon hearing the submissions made on behalf of the parties, it is clear that the private respondents have not maintained the statutory side open spaces as indicated in the West Bengal Municipal (Building) Rules, 2007.

The resolution of the Board of Councillors of the Municipality cannot override the statutory provisions of law.

In view of the above, the Municipality is directed to take steps to ensure that any construction which has been made by infringing the statutory side open spaces are demolished in accordance with law, after giving

notice to the private respondents positively within a period of twelve weeks from the date of communication of a copy of this order.

Copy of the resolution dated 29th October, 1997 adopted by the Board of Councillors, Ghatal Municipality and the communication made by the learned advocate appearing for the Municipality to the learned advocate representing the private respondents be retained with the records.

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.)