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16.06.2023
d.p.

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

W.P.A 5843 of 2023

**Sahadeb Das
-versus
The State of West Bengal & Ors.**

**Ms. Priyanka Paul.
...For the Petitioner.**

**Mr. Bijoy Adhikary,
Mr. Somnath Maitra,
Ms. Susmita Adhikary.
...For the Respondent No.7.**

The petitioner complains of illegal and unauthorized construction at the instance of the private respondent.

Specific allegation is that construction is being made without maintaining the mandatory side open spaces.

Learned advocate appearing for the private respondent submits, upon instructions, that a civil suit by and between the parties is pending consideration before the Learned Court below. The Municipality will not be the appropriate authority to decide the issue.

None appears on behalf of the Municipality.

The submission of the learned advocate representing the private respondent is that the

Municipality will not be the competent authority to decide the issue cannot be accepted by the Court. The Civil Court will adjudicate the civil rights of the parties.

It is for the Municipality to ascertain and enquire as to whether the construction is being made in accordance with the municipal laws and in terms of the plan sanctioned by the Municipality.

The Municipality is the competent authority to take a decision, if any unauthorized construction is detected.

Specific case of the petitioner is that construction is being made without leaving the mandatory side open spaces. The objection before the Municipality is pending consideration.

As it appears that the representation of the petitioner objecting to the illegal and unauthorized construction is pending consideration at the end of the respondent authorities, no useful purpose will be served by keeping the writ petition pending.

The writ petition is accordingly disposed of by directing the respondent no.4 being the Board of Councillors, Dainhat 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 three months 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.

A spot inspection shall be conducted to ascertain the nature and extent of unauthorized construction.

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 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.)