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21.03.2023
d.p.

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

W.P.A 5965 of 2023

**Swarupananda Jana & Anr.
-versus
Midnapore Municipality & Ors.**

**Mr. Sudip Deb,
Mr. Riju Ghosh,
Mr. Sumitava Chakraborty,
Mr. Aranyak Saha,
Ms. Ipsita Ghosh.
...For the Petitioners.**

**Mr. Sujoy Bandyopadhyay,
Mr. Shambhu Mahato.
...For the Municipality.**

**Mr. Lalit Mohan Mahata,
Mr. Prasanta Behari Mahata.
...For the State.**

**Mr. Chittapriya Ghosh,
Mr. Kuntal Ray,
Ms. Priyanka Saha.
...For the Respondent No.9.**

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

The order dated 7th January, 2023 signed by the Chairman, Midnapore Municipality passed allegedly in compliance of the direction passed by this Court on 10th March, 2022 in WPA 3033 of 2022 (Swarupa Nanda Jana & Anr. -vs- Midnapore Municipality & Ors.) is impugned in the present writ petition.

The Court directed the Municipality to take a decision on the complaint filed by the petitioner, Swarupananda Jana. The manner in which the complaint was required to be addressed, was clearly laid down by the Hon'ble Court.

The petitioners allege that the impugned order has not been passed in accordance with the direction passed by the Hon'ble Court.

On a perusal of the impugned order, it appears that the Chairman of the Municipality heard the parties and directed that the building plan of the private respondents will be sanctioned. The unauthorized construction shall be demolished by both the parties and the stop work notice issued against the private respondents shall be withdrawn.

The Municipality while deciding the issue in question ought to have acted strictly in accordance with the procedure laid down by the Court.

Though it appears that an inspection was conducted but the details of the inspection are not reflected in the impugned order. The extent and details of the unauthorized construction are not mentioned.

The Chairman directed both the parties to demolish the unauthorized portions without specifying the deviation(s) or the unauthorized portion(s) of the subject construction.

It appears that a counter complaint by the private respondents alleging unauthorized construction at the instance of the petitioner is also pending consideration before the authority.

A suit alleging encroachment has been filed by the private respondents against the petitioners herein and the same is also pending consideration before the Learned Court below.

According to the provisions of law, the Board of Councillors of the Municipality is the competent authority to decide the issue. It appears that the impugned decision has been taken independently by the Chairman of the Municipality.

The Chairman of the Municipality does not have the independent authority to take a decision in the matter.

In view of the above, the impugned order is liable to be set aside and is accordingly, set aside.

The Midnapore Municipality is directed to act strictly in accordance with the procedure laid down by this Court on 10th March, 2022 in WPA 3033 of 2022.

The Municipality shall consider the complaint of the petitioner and the counter complaint filed by the private respondents simultaneously to arrive at a conclusive decision in the matter.

Decision shall be taken in the matter at the earliest but positively within a period of twelve weeks from the date of communication of this order.

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.)