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04.05.2023
d.p.

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

W.P.A 10721 of 2023

**Monojit Dalal
-versus
The Bolpur Municipality & Ors.**

**Mr. Ayan Banerjee,
Ms. Debarsee Dhamali,
Ms. Riya Ghosh.
...For the Petitioner.**

**Mr. Uttiya Ray,
Mr. Ashutosh Pal.
...For the Respondent
Nos. 1 to 4.**

**Mr. Nilay Sengupta.
...For the Respondent No.5.**

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

The petitioner is aggrieved by the act of the Chairman, Bolpur Municipality by directing the petitioner to demolish the boundary wall as the same has been constructed upon encroachment of the private land of the private respondent.

According to the petitioner, the private respondent is guilty of encroaching upon his private land. For the purpose of protection of his land, the petitioner has constructed a boundary wall within the permissible height for which it does not require a sanction.

The Municipality by the impugned notice dated 28th April, 2023 directed demolition of such wall.

The petitioner has challenged the authority of the Chairman in passing the impugned order of demolition.

It has been submitted that the Municipality ought not to enter into the issue of encroachment.

The petitioner already filed a civil suit before the Learned Court below and obtained an order of injunction restraining the defendants from dispossessing the plaintiff or from transferring the suit property in favour of any stranger, changing the nature and character of the suit property and further restraining the defendants from creating any disturbance in the peaceful possession of the plaintiff in respect of the scheduled property till 30th June, 2023.

Learned advocate appearing for the private respondent submits, upon instructions, that the passage in question is a common passage and the petitioner has illegally constructed a wall by blocking the ingress and egress to her land.

It has been submitted that the petitioner has purchased the property very recently; whereas the private respondent is enjoying ownership of the property in question for a considerable period of time.

It has further been contended that the Municipality has not decided any private issue but has only directed the petitioner to remove the boundary wall

because the same was constructed without maintaining the mandatory side open spaces.

Learned advocate appearing for the Municipality submits that a resolution was adopted by the Board of Councillors of the Municipality to direct the petitioner to demolish the boundary wall as the same was constructed in a manner blocking the ingress and egress to the land of the private land.

It has been submitted by the Municipality that the constructions are old in nature but the disputed wall has been constructed recently.

After hearing the parties, it appears that the issue is with regard to encroachment of private land.

Whether the parties are guilty of encroaching the private land of each other is not an issue to be decided by the municipality. The same ought to be decided by the appropriate civil court.

The petitioner is supported by an order of injunction passed by the Learned Court below in a title suit filed against the private respondent. The parties to the suit are bound by the direction passed by the Learned Court.

The municipality ought not to enter into the issue and pass any direction for demolition of the boundary wall, more so because construction of boundary wall upto the permissible height does not require a sanction.

In view of the above, the act of the municipality in directing the petitioner to demolish the boundary wall

cannot be supported in law. The same is liable to be set aside and is, accordingly, set aside.

Both the private parties will be at liberty to approach the appropriate forum for relief.

The writ petition stands disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Amrita Sinha, J.)