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29.03.2023
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**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A 15652 of 2021

**Soumyadeep Dutta
-versus-
The State of West Bengal & Ors.**

**Mr. Piyush Chaturvedi,
Mr. Biswajit De,
Ms. Mousumi Arji.
...For the Petitioner.**

**Mr. Sujay Bandyopadhyay,
Mr. Jagajyoti Das,
Mr. Sambhu Mahato.
...For the Municipality.**

**Ms. Tuli Sinha.
...For the State.**

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

None appears on behalf of the private respondents.

The order dated 12th February, 2021 passed by the Board of Administrators, Midnapore Municipality is impugned in the present writ petition.

The said order was passed allegedly in compliance of the direction passed by the Court on 22nd December, 2020 in WPA 17465 of 2019 wherein the Court directed the Municipality to initiate appropriate proceeding in respect of the private respondents' shop

room and decide whether the construction is illegal and required to be demolished or there should be retention.

The proceeding was directed to be concluded upon notice to both the parties and decision was to be taken without being influenced by the statement of facts filed in the writ petition.

In terms of the direction passed by the Court, the subject property was inspected upon prior notice to the parties and hearing was conducted. The parties were represented and heard at length.

At the time of hearing, it was observed that the petitioner as well as the private respondents occupied the selfsame RS plot.

The Municipality opined that both the petitioner and the private respondents were guilty of raising construction without obtaining prior permission.

It was further recorded that had the permission been applied for, it could not have been possible to allow the same as the quantum of land is very meager and not liable for giving any permission for raising construction of a house as per the provisions of the West Bengal Municipal Act and the corresponding rules.

The Municipality further opined that the parties may make amicable arrangements amongst themselves within a fortnight from the date of receipt of the order, failing which the Municipality will demolish both the constructions by giving prior notice.

The petitioner is aggrieved by the same.

It has been submitted that the private respondents never lodged any complaint against the construction made by the petitioner. The construction of the petitioner is in existence since 1989 and the private respondents have raised construction very lately.

The Court did not direct the Municipality to decide upon the construction made by the petitioner. Specific direction was to inspect the property of the private respondents and take a decision with regard to the unauthorized construction made thereon.

It has been contended that the Municipality transgressed its jurisdiction and passed order directing settlement of the disputes amicably, failing which demolition will be conducted by the Municipality.

It has been submitted that the parties entered into a mutual agreement to leave certain spaces in between the constructions to be made. The private respondents failed to maintain the said spaces as mentioned in the said agreement entered in between the parties. Prayer has been made for setting aside the impugned order.

The Municipality has filed the spot inspection report before this Court in compliance of the direction passed on 6th February, 2023.

The spot inspection report mentions that in the Eastern (back) side there is a clear space of 3'10" and the Western (front) side there is a clear space of 2' 11" in between the said two buildings. At the time of inspection none of the parties produced any

documents/papers in support of the construction made.

The petitioner contends that the space that has been found to be left open includes the space which was left open by the petitioner.

Learned advocate representing the Municipality submits that the mutual agreement referred to by the petitioner is an unregistered piece of document. Relying on the said document the parties ought not to have raised construction.

It appears from the documents placed before this Court and the submissions made on behalf of both the parties that the total area of the land in question including the land of the petitioner and the private respondents is so small that construction cannot be permitted to be made thereon in accordance with the municipal laws and the corresponding rules.

None of the parties is able to produce any document in support of the construction made. The Municipality opined that the parties should resolve the disputes amicably.

It appears that the relationship between the parties is acrimonious and no settlement can be arrived at between them.

In such a situation, it is for the Municipality to take a decision whether to permit the parties to retain the portions constructed by them.

Learned advocate appearing for the Municipality has submitted that both the parties are running book

shops for selling books and both the shops are in existence for a considerable period of time. The said shops cater to the need of the members of the locality. If the shops are demolished, then the members of the locality will suffer.

It appears that none of the parties have prayed before the authority seeking retention of their portions. The petitioner is hell bent to get the structure of the private respondents demolished.

If the mandatory side open spaces are to be maintained by either of the parties, then the construction could not have been raised at the very first place.

Reference has been made to an agreement entered into by and between the parties.

If there is an allegation of encroachment or non-performance of the conditions of the unregistered agreement, then it will be open for the parties to seek remedy before the appropriate forum.

The Municipality will not be the proper authority to decide the issue of encroachment or any private dispute in between the parties.

The submission of the petitioner that the Municipality transgressed its jurisdiction in passing the order of demolition of the structure of the petitioner cannot be accepted by the Court. The petitioner was present at the time of inspection and at the time of hearing.

The Court directed the Municipality to take a decision with regard to the construction made by the private respondents. At the time of inspection, the Municipality noticed the structure of the petitioner on the selfsame plot and passed necessary direction. The same will certainly not be transgression on the part of the Municipality.

In view of the observations made hereinabove, the writ petition is disposed of.

The order passed by the Municipality is not interfered with.

The report filed by the Kotwali Police Station signed on 4th October, 2021 be taken on record.

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.)