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04.01.2023
d.p.

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

W.P.A 17338 of 2022

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

**Mr. Rajdeep Bhattacharya,
Mr. Sauradeep Dutta.
...For the Petitioner.**

**Mr. Shyama Prasad Purkait,
Ms. Moumita Mondal.
...For the Municipality.**

**Mr. Debabrata Acharyya,
Mr. Sital Samanta.
...For the Respondent
Nos. 5 and 6.**

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

The petitioner is aggrieved by the order passed by the Executive Officer, Diamond Harbour Municipality on 13th June, 2022 by incorporating the name of the respondent No.5 in the certificate of enlistment.

Initial certificate of enlistment was issued by the Diamond Harbour Municipality in favour of Debprosad Das, the respondent No.6 and Sujit Das, the petitioner herein.

The Municipality acted on the basis of a deed of gift executed by Debprosad Das, the respondent No.6 in

favour of one of his sons Biswajit Das, the respondent No.5. The petitioner is the other son of Debprosad Das.

The petitioner filed a suit before the Learned Civil Judge, Junior Division, 2nd Court, Diamond Harbour being Title Suit No. 41 of 2022 seeking declaration and permanent injunction.

The Learned Court, by order dated 23rd March, 2022, directed both the parties to maintain status quo with regard to the nature, character and present possession over the suit property, as it stood on the date before passing the ad interim order of injunction. The said suit is pending consideration till date.

According to the petitioner, the Municipality ought not to have deleted the name of his father and incorporated the name of his brother in the certificate of enlistment.

Learned advocate appearing for the respondent Nos. 5 and 6 opposes the prayer of the petitioner.

It has been submitted that the father has already executed a deed of gift in favour of Biswajit Das and submitted the aforesaid document before the Municipality.

Learned advocate appearing for the Municipality admits that the Municipality acted on the basis of the deed of gift and the application filed by the beneficiaries submitted before the Municipality and incorporated the name of the donee that is Biswajit Das in the certificate of enlistment.

I have heard the submissions made on behalf of both the parties.

It appears that a title suit is pending consideration before the Learned Civil Court.

It is for the Learned Court below to take a decision with regard to the share of the parties in the business.

The Municipality has merely incorporated the name of the private respondent No.5 relying on the deed of gift submitted by the father. The deed of gift has not been challenged by any of the parties. There is no order restraining the Municipality to act on the basis of the deed of gift submitted before it.

The Learned Civil Judge, in the pending suit, directed both the parties to maintain status quo with regard to the nature, character and possession over the suit property. The parties are bound to act in compliance of the direction passed by the Learned Civil Judge.

The said direction, however, does not debar the Municipality to take steps for issuance of fresh certificate of enlistment in favour of any of the parties.

In the event the petitioner is aggrieved by the act of the Municipality in taking steps in accordance with the deed of gift, it will be open for the petitioner to approach the appropriate forum for relief.

In the present petition, there is no scope for interfering with the order passed by the Executive Officer, Diamond Harbour Municipality.

The Municipality has not decided the share of the parties and the parties will be at liberty to take steps for declaration of their shares before the appropriate forum, if so advised.

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.)