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01-09-2023
(Ct. no.06)
debajyoti

**IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE**

MAT 1396 of 2023

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IA NO:CAN/1/2023

Smt. Mita Bakshi & Anr.

Vs.

The Chairman, Serampore Municipality & Ors.

Mr. Sudipta Kumar Bose,

Ms. Lipika Nath

... For the Appellants.

Affidavit-of-Service filed in Court today be taken on record. It appears therefrom that the respondents have received notice of this appeal. However, nobody appears on behalf of the respondents.

The writ petitioners' application being WPA 1181 of 2023 has been dismissed by a learned Single Judge of this Court by the impugned judgment and order dated June 13, 2023. Hence, this appeal.

The writ petitioners approached the learned Single Judge with the grievance that the private respondents have made illegal and unauthorized construction on the common passage by putting up gates, walls and iron grills. This was disputed by the private respondents. Learned advocate for the Municipality submitted before the learned Judge that it is not possible for the Municipality to decide private disputes between the parties. The learned Judge dismissed the writ petition with the following observations:-

“ From the submissions made on behalf of the parties and upon perusal of the materials on record it appears that there are several private disputes in between the parties. The Municipality will not be the Competent Authority to decide or adjudicate any private disputes in between the parties.

It will be open for the aggrieved party to approach the appropriate civil forum for declaration of their private rights.”

We have heard learned advocate for the appellants. Learned Single Judge was perfectly justified in observing that the Municipality is not the Competent Authority to decide private disputes between two neighbours who share a common passage.

However, it is definitely within the domain of the Municipality to ensure that no unauthorized construction is put up by any person within the territorial jurisdiction of that Municipality.

Accordingly, we grant liberty to the appellants/writ petitioners to make a fresh comprehensive representation to the Chairperson of Serampore Municipality ventilating their grievance regarding alleged unauthorized construction having been made by the private respondents. If such a representation is made within a fortnight from date, the same shall be disposed of by the Chairperson of the Municipality, being the respondent no.1 herein, in accordance with law and the applicable rules and regulations, by a reasoned order, within a period of eight weeks from the date of receipt of the representation, after affording opportunity of hearing to the appellants/writ petitioners and the private

respondents herein or their authorized representative. Further necessary action may be taken by the Municipality depending on the outcome of the hearing.

We make it clear that the Municipality shall restrict the exercise only to an enquiry regarding whether or not any unauthorized/illegal construction has been made by the private respondents, as alleged by the appellants herein. In other words, the Municipality shall find out if the private respondents have made any construction which requires prior permission of the Municipality, but for which, no permission has been obtained by the private respondents. The Municipality shall not enter into or decide any private disputes between the parties.

The appeal and the connected application are, accordingly, disposed of.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance of all necessary formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)