

Item No.21

15.12.2023
Ct-24
AGM

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 20954 of 2023

Kundan Shaw
v.
The State of West Bengal & Ors.

Mr. Partha Sarathi Das
... for the petitioner.

Mr. Jayanta Samanta
Mr. Ratul Biswas
Mr. Kushal Biswas
... For the State.

Mr. Somnath Ghosh
... for the respondent nos. 6 to 10.

Mr. Subhabrata Das
Mr. Mrinal Kanti Das
Mr. Kartick Kumar Goyal
... For the Municipality.

The petitioner complains that the private respondent has raised illegal and unauthorised construction over a common passage in between the premises of the petitioner and that of the private respondent.

Learned advocate representing the private respondent submits that construction was made in accordance with the plan sanctioned by the municipality.

Learned advocate representing the municipality submits, upon instruction that, there is already a civil suit filed by the petitioner as plaintiff praying for

declaration and injunction in respect of the common passage. An order was passed initially granting injunction. It was carried in appeal by the private respondent herein and the order of injunction stood vacated.

The Municipality has conducted an inspection and found that the petitioner himself is guilty of making construction by encroaching the common passage.

The report of the municipality was taken into consideration by the learned civil Court and thereafter the order of injunction was vacated.

From the submission made on behalf of all the parties, it appears that the entire issue relates to the construction made over the common passage.

The municipality will not be the appropriate authority to adjudicate whether the passage in question is common or not.

It will be open for the parties to approach the appropriate civil forum for declaration of rights over the common passage. If thereafter it appears that construction has been made over the common passage, then the municipality shall take necessary steps to deal with such unauthorised construction.

Affidavit-of-service filed in Court today be kept with the records.

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.)