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20.11.2023
d.p.

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

W.P.A 21498 of 2023

**Basudeb Poddar & Ors.
-versus
The State of West Bengal & Ors.**

**Ms. Malyasree Maity.
...For the Petitioners.**

**Mr. N.C. Bihani,
Ms. P.B. Bihani,
Mr. Soumyajit Ghosh.
...For the South
Dum Dum Municipality.**

**Ms. Sulagna Bhattacharya,
Mr. Amritalal Chatterjee.
...For the State.**

The petitioners complain of illegal and unauthorized construction at the behest of the private respondents.

The writ petition sought to be served upon the private respondents has returned unserved with the postal endorsement 'refused'.

Affidavit-of-service filed in Court today is taken on record. Copy of the unserved writ petitions has been returned to the learned advocate appearing for the petitioners, retaining only the envelopes showing refusal.

Allegation of the petitioners is that the private respondents have made construction in deviation of the plan sanctioned, by encroaching the public road, by covering up the municipal drain and by not maintaining the mandatory side open spaces.

Objection filed against such unauthorized construction is pending consideration.

It has been submitted that the Dum Dum-Cossipore Road is a very congested thoroughfare and because of the unauthorized construction by encroaching upon the public road, the breath of the road has become narrower which is obstructing the free movement of the pedestrians and the vehicular traffic. Prayer has been made for removal of the unauthorized construction.

Learned advocate appearing for the Municipality is yet to receive instruction in the matter.

As it appears that the representation of the petitioners objecting to the illegal and unauthorized construction is pending consideration at the end of the respondent authorities, no useful purpose will be served by keeping the writ petition pending.

The writ petition is accordingly disposed of by directing the respondent no.4 being the Board of Councillors, South Dum Dum Municipality to consider and dispose of the representation made by the petitioners strictly in accordance with law, after giving an opportunity of hearing to all the necessary parties including the petitioners within a period of three months from the date of communication of a copy of this order. The said respondent shall pass a reasoned

order and communicate the same to all the necessary parties including the petitioners immediately thereafter.

A spot inspection shall be conducted to ascertain the nature and extent of unauthorized construction.

In the event the aforesaid respondent is of the considered opinion that the construction has been made either in violation of the plan sanctioned or devoid the sanction plan, then necessary steps shall be taken to deal with such unauthorized construction, in accordance with law.

The aforesaid respondent shall restrict the consideration of the representation with regard to unauthorized construction only and not enter into or decide any private dispute of the parties regarding right, title and interest in respect of the aforesaid land.

It is made clear that this Court has not entered into the merits of the claim made by the petitioners and all points are left open to be decided by the aforesaid respondent at the time of consideration of the representation of the petitioners.

The petitioners are directed to forward a copy of the representations dated 10th July, 2023 and 16th July, 2023 to the aforesaid respondent at the time of communicating the order of the Court.

The Board of Councillors is directed to ensure that unauthorized construction in any manner whatsoever encroaching upon the public road is not carried out by any of the parties.

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.)