

Item No.12

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

24.03.2023
Ct-24

WPA 22125 of 2022
Abhijit Sarkar

v.

The State of West Bengal & Ors.

Mr. Sankar Paul
Mr. Imtiaz Ahamed
Ms. Tapati Sarkar
... for the petitioner.

Mr. Ayan Banerjee
Ms. Debasree Dhamali
... for the Municipality.

Mr. Srinath Singha Roy
... for the State.

Mr. Sudip Deb
Mr. Aranyak Saha
Ms. Sangita Chakraborty
Ms. Sayanika De
Ms. Ipsita Ghosh
... for the respondent nos. 4 to 7.

The issue in the writ petition is with regard to certain constructions allegedly made at the instance of the private respondents over a private passage. It has been alleged that the construction made is an unauthorized one.

The petitioner submits that the said passage is in existence for a considerable period of time and the same is maintained by the Municipality.

The petitioner seeks direction upon the Municipality for removal of the alleged unauthorized constructions.

The aforesaid contention of the petitioner is denied by the learned advocate representing the private parties.

An inspection report has been placed on record by the Sub-Assistant Engineer, Engineering Department, Bally Municipality clearly mentioning that the officer was unable to identify whether there is a common passage or not as there is no such map or document available in the custody of the Bally Municipality.

Learned advocate representing the Bally Municipality disputes that the passage in question is at all maintained by the Bally Municipality.

It appears from the submissions made on behalf of the parties that the passage in question is not a public passage. The fact of the passage being maintained by the Municipality does not change the nature and character of the passage and the same cannot be treated as a public passage. The Municipality is not bound to remove any unauthorized construction by a private respondent over any private property where allegation is of encroachment.

The parties will be at liberty to approach the appropriate civil forum for necessary relief, 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.

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(Amrita Sinha, J.)