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20.11.2023
d.p.

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

W.P.A 22283 of 2023

**Sri Chanchal Das
-versus
The Contai Municipality & Ors.**

**Mr. Tanmoy Mukherjee,
Mr. Souvik Das,
Mr. K. Raihan Ahmed,
Mr. Rudranil Das.
...For the Petitioner.**

**Mr. Koushik Chatterjee,
Mr. Nilanjan Adhikari.
...For the Respondent
Nos. 1 to 3.**

**Mr. Nirmalendu Patra,
Mr. Debnarayan Patra.
...For the Respondent No.5.**

The petitioner complains of illegal and unauthorized construction at the behest of the private respondent.

The petitioner and the private respondent are full blooded brothers. The property was gifted by the father of the parties.

The petitioner relies upon the report of the surveyor, Contai Municipality in support of the submission that the mandatory side open spaces have not been maintained by the private respondent at the time of raising construction.

Specific contention is that the construction is being made without obtaining any sanction from the Municipality.

Objection filed against such unauthorized construction is pending consideration till date.

Learned advocate appearing for the private respondent denies the allegation of the petitioner.

It has been submitted that the construction in question is an old one and only renovation work is being done after obtaining permission from the Municipality and upon payment of the necessary charges to the Municipality.

In the absence of proper instruction from the Municipality it is not possible for the Court to decide the issue conclusively.

As it appears that the representation of the petitioner 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.2 being the Board of Councillors, Contai Municipality to consider and dispose of the representation made by the petitioner strictly in accordance with law, after giving an opportunity of hearing to all the necessary parties including the petitioner 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 petitioner 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 petitioner and all points are left open to be decided by the aforesaid respondent at the time of consideration of the representation of the petitioner.

The petitioner is directed to forward a copy of the representation dated 7th August, 2023 to the aforesaid respondent at the time of communicating the order of the Court.

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.)