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17.10.2023
A.G.M.

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

W.P.A 23729 of 2023

**Ashok Biswas & Anr.
-versus
Katwa Municipality & Ors.**

**Mr. Ayan Banerjee,
Ms. Debasree Dhamali,
Ms. Riya Ghosh.
...For the Petitioners.**

**Mr. Tapas Kumar Bhattacharya
Mr. Aviroop Bhattacharya
...For the Municipality.**

**Mr. Rajarshi Basu,
Mr. Parikshit Goswami.
...For the State.**

Report has been filed by the Chairman, Katwa Municipality wherein it has been mentioned that the Municipality started construction of development work on its own land which was gifted by another co-owner Jagannath Das on 4th October, 2023 by registered deed.

The Municipality has averred that the recorded owner Jagannath Das approached the Municipality disclosing his intention to gift 5 decimals in plot nos. 869 and 871 in favour of the Municipality for development purpose. The Municipality agreed to take the land.

Arrangement was made for preparing a deed of gift to transfer the aforesaid plots having an area of 3 decimals and 2 decimals. Deed of gift was submitted in the registration office on 20th September, 2023 after

sending the same and possession of the plot was handed over to the Municipality in September 2023.

According to the Municipality, they became the owner of the two plot nos. 869 and 871 having total area of 5 decimals and construction is being made on the gifted land and not on the land of the petitioners.

The Municipality has disclosed the pendency of a partition suit in connection with the plot nos. 869 and 871.

Learned advocate representing the petitioners has produced the order sheet in respect of the partition suit being Title Suit No. 41 of 2022 (Jagannath Das – Vs- Ganesh Mondal & 5 Ors).

It appears therefrom that by order dated 16th February, 2022, the learned Civil Judge (Senior Division) was pleased to direct both the plaintiffs and the defendants to maintain status quo in respect of the nature, character and possession of the suit property.

From the averments made in the report filed by the Municipality, the date of handing over possession has been conveniently not disclosed. The order of injunction restraining the parties from handing over possession has also not been mentioned.

Specific case of the petitioners is that the Municipality demolished the boundary wall and took possession of the property in question in violation of the order passed by the learned Court below and is making construction thereon by digging portions of the land in question. Trees belonging to the petitioners have been uprooted.

From the submissions made on behalf of both the parties and upon perusal of the materials on record, it appears that it was highly improper for the Municipality to take possession of the plot which is the subject matter of dispute in the learned Court below. The donor

of the subject plot was specifically restrained by an order of injunction from handing over possession.

The order of the learned Civil Court appears to have been clearly flouted. The Municipality ought not to have been a party in any act which is in violation of the order passed by the learned Court.

In view of the above, the Municipality is restrained from proceeding any further with the construction which the Municipality intends to make at the subject premises till obtaining specific order from the learned Court below.

The Municipality is directed to immediately remove their men and machinery from the subject plots of land.

The petitioners will be at liberty to approach the competent forum for damages caused to their land, 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.

(Amrita Sinha, J.)