

Item No.15

In the High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

17.10.2023
Ct-24

WPA 24347 of 2023
Nidhiram Roy

v.

The State of West Bengal & Ors.

Mr. Nidhiram Roy
... petitioner in person.

Mr. Sandip Ghosh
Mr. Sudarsan Roy
Mr. Goutam Chakraborty
Mr. Romit Bose
... for the North Dum Dum Municipality.

Mr. Debdutta Saha
Mr. Nitindra Mohan Mukherjee
Mr. Auradip Parui
... for the respondent nos. 5 & 6.

The order of demolition passed by the Board of Councillors, North Dum Dum Municipality on October 4, 2023 is impugned in the present writ petition.

By the said order the Municipality invoked the provision under Section 184 of the West Bengal Municipal Act, 1993 and intends to remove the obstruction, encroachment made on the public street.

The petitioner specifically submits that the street in question is not public street. It is and was all along a private common passage. The Municipality with the sole intention of aiding and abating the private respondents is trying to treat the said common passage as a public street. Prayer has been made for setting aside the impugned order of demolition.

The petitioner relies upon various orders and documents in support of his contention that the street is not public in nature. The construction is in existence for a considerable period of time.

Learned advocate representing the private respondents and the Municipality denies the allegation of the petitioner.

It has been submitted that the street was all along a public street. The public utilities, i.e. the electricity, drain, sewage connection are passing beneath the wall that has been constructed by the petitioner.

The parties agree that a suit for declaration in respect of the selfsame plot of land is pending consideration before the learned Court below.

Upon hearing the parties it appears that there are several disputed questions of facts involved in the instant writ petition. The same cannot be adjudicated by the writ Court. The issues involved in the instant writ petition cannot be decided without taking evidence.

Though, the Municipality claims that the street in question is a public one but the same is seriously disputed by the petitioner.

In view of the above, the Court is of the opinion that the petitioner ought to approach the competent Civil Court for remedy.

Accordingly, the writ petition stands disposed of granting liberty to the petitioner to approach the competent civil forum for relief.

The North Dum Dum Municipality is restrained from executing the impugned order till December 22, 2023 or until further order whichever is earlier.

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.)