

Item No.48

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

22.03.2023
Ct-24

WPA 25772 of 2022
Kinkar Chandra Roy
v.
South Dum Dum Municipality & Ors.

Mr. Abhimanyu Banerjee
... for the petitioner.

Mr. Santanu Das
... for the respondent nos. 6 & 7.

Mr. Ziaul Islam
Md. Mansoor Alam
... for the State.

Mr. Amales Ray
Ms. Mousumi Bhowal
Mr. Aman Gupta
Mr. Ishan Bhattacharya
... for the Municipality.

The petitioner is aggrieved by the action of the Municipality in not taking steps for demolition of a boundary wall which was erected at the instance of the private respondents in a manner that the right to egress and ingress to the petitioner's plot of land has been blocked.

It appears that there is a Mandir and a wall has been constructed by the side of the Mandir. The petitioner as well as the private respondents admits that the Mandir is existing for a considerable period of time.

The petitioner submits that the boundary wall has been constructed lately. The said submission is denied and disputed by the private respondents.

The Municipality conducted a spot inspection in the presence of both the petitioner as well as the private respondents. The portion of land where the boundary wall has been constructed appears to be a passage used by public in general. The same is, however, not recorded as a public passage.

It will not be proper for the Municipality to enter into any land not recorded as public passage for demolition of a boundary wall constructed thereon, more so because construction of boundary wall upto a particular height does not require any permission for construction. The boundary wall is within the permissible height.

Whether the same has been constructed upon encroaching the passage which is used by the petitioner and other members of the locality is to be decided by an appropriate civil Court. The Municipality will not be the proper authority to decide the issue.

In view of the above, the instant writ petition is disposed of by granting liberty to the petitioner to approach the appropriate forum for adjudication of civil rights, 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.

Sh

(Amrita Sinha, J.)