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18.04.2023
d.p.

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

W.P.A 23974 of 2019

**Apurba Mukherjee & Ors.
-versus
The State of West Bengal & Ors.**

**Mr. Sandip Ghosh,
Ms. Mousumi Chatterjee,
Mr. Partha Sarkar.
...For the Petitioners.**

**Mr. Ashis Kumar Chowdhury,
Mr. Avijit Kar.
...For the
Sainthia Municipality.**

**Mr. Uttam Kumar De.
...For the State.**

The petitioners challenge the stop work notice issued by the Sainthia Municipality on 19th September, 2006.

By the said notice, the petitioners were directed to stop construction of the boundary wall.

The petitioners claim to be the owners of the said property and submit that the boundary wall will be constructed below 6 ft. in respect of the plot no. 891. The same is for the purpose of protection of the property.

It appears that the Municipality issued the stop work notice on the objection raised by the local inhabitants.

An earlier writ petition was filed by the petitioners being W.P. No. 2448 (W) of 2006 which stood disposed of by the Court on 2nd August, 2006 by directing the police to provide necessary protection to the petitioners to construct the boundary wall in Dag No. 891.

Fact remains that despite obtaining order from the Hon'ble Court the petitioner has not been able to construct the boundary wall till date.

The petitioners seek permission to construct the boundary wall after setting aside the stop work notice.

Learned advocate appearing for the Municipality submits that the objectors have not been impleaded as party respondent in the present writ petition. A Title Suit being Title Suit No. 185 of 2006 filed by the objectors against the petitioners is pending consideration before the Learned Court below.

Learned advocate appearing for the petitioners submits that the said Title Suit filed by the objectors has abated.

It appears from the documents annexed to the writ petition that the petitioners also filed a Suit against the objectors being Title Suit No. 147 of 2014 seeking declaration of title and permanent injunction in respect of the plot no. 891. The said Suit is pending consideration till date.

As the petitioners' Suit seeking declaration of title is yet to be disposed of, as such, it will be highly improper to direct the Municipality to permit the

petitioners to raise boundary wall over the property whose title is yet to be decided by the Court.

Though there is a recording by this Court in the order dated 28th November, 2016 in CAN 6686 of 2006 with W.P. 2448 (W) of 2006 that Dag No. 891 belong to the petitioners but as a cloud has been raised with regard to the title of the petitioners in respect of the said plot of land and the petitioners themselves filed a Title Suit seeking declaration of title, accordingly, the petitioners may take steps for construction of the boundary wall after obtaining necessary orders from the Learned Court below where the declaratory suit is pending consideration.

In view of the above, no relief can be granted to the petitioners in the instant case.

The writ petition fails and is hereby dismissed.

The instruction given by the Executive Officer, Sainthia Municipality dated 17th April, 2023 be retained with the records.

It has been submitted that on 31st March, 2023, the learned advocates, Mr. Ashis Kumar Chowdhury and Mr. Avijit Kar appeared on behalf of the Sainthia Municipality but their names have inadvertently not been recorded in the said order.

Let the names of Mr. Ashis Kumar Chowdhury and Mr. Avijit Kar, learned advocates representing the Sainthia Municipality be reflected in the order sheet dated 31st March, 2023.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)