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ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

RVWO/25/2023
IA NO:GA/1/2023
MINATI KUNDU
-VS-
RAJ GUPTA AND ORS.

BEFORE:
HON'BLE JUSTICE RAJASEKHAR MANTHA
DATE: 15TH JUNE 2023.

APPEARANCE:
Mr. A. Mondal, Adv.; Mr. S. Nandy, Adv.; Ms. A. Chakraborty, Adv.; Ms. S.
Naskar, Adv.; Mr. S. Pathak, Adv., for petitioner.
Mr. D. Ganguly, Adv., for respondent no.1.
Mr. M. Malhotra, Adv., for State.

THE COURT: Review is sought of the order dated September 15, 2022, by one Minati Kundu, the review applicant. She claims to be the owner of a property adjacent to that of the writ petitioner. She claims that there was a common passage between the two properties and therefore construction of the boundary wall by the writ petitioner with the assistance of the order dated September 15, 2022, is illegal.

Review and recall is sought on the ground that she was deliberately not made a party to the writ petition. The order was obtained by suppression of material facts or a misstatement thereof.

According to the review applicant, the boundary wall would have the effect of extinguishing the common passage between the two properties. The said boundary wall would also affect the right of the ingress and egress in her property.

These allegations are denied by the writ petitioner who is the respondent no.1 in this review application.

Admittedly, the writ petitioner has filed a civil suit being Title Suit No.2220 of 2022 before the learned 10th Judge, City Civil Court at Calcutta after the order dated 15th September, 2022.

This Court is of the view that the right of the writ petitioner to erect the boundary wall or the right of the review applicant to have access to the common passage, which has been blocked by the construction of the boundary wall, are issues that should be dealt with appropriately in the pending civil suit.

It is, therefore, ordered that the review applicant shall be entitled to apply before the Civil Court and establish her contention that the writ petitioner does not have the right to construct the boundary wall. The review applicant shall also be entitled to establish before the Civil Court that there was a common passage

between the two properties, i.e. that of the writ petitioner and the review applicant, and that the review applicant was using such common passage for ingress and egress at her property.

The writ petitioner shall be equally entitled to establish his contentions as regards his right to erection of the boundary wall and the continued existence of the boundary wall before the Civil Court.

It is therefore directed that the continued existence the boundary wall erected by the writ petitioner under the orders of this Court dated September 15, 2022, shall abide by any order that would be made by the Civil Court in Title Suit No.2220 of 2022.

The Civil Court shall proceed to deal with the matter uninfluenced by any observation made in the order dated September 15, 2022 or in the pleadings in the writ petition or the report of the police filed in the writ petition.

It is recorded that the writ petitioner denies the allegations made by the review applicant in her application.

With the aforesaid observations, RVWO/25/2023 is allowed. All interim applications are accordingly disposed of.

(RAJASEKHAR MANTHA, J.)

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