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26.09.2024
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**Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction**

**W.P.A 2235 of 2023
IA No. CAN 3 of 2024
CAN 4 of 2024
CAN 5 of 2024**

**Sanjoy Ghosh
-versus
The State of West Bengal & Ors.**

**Mr. Sudipto Kumar Mazumdar,
Mr. Shubhankar Dutta.
...For the Petitioner.**

**Mr. Subir Kumar Saha, AGP,
Ms. Bedashruti Bose.
...For State.**

**Mr. Deborshi Dhar.
...For the Corporation.**

**Mr. Nabankur Paul,
Ms. Sutapa Sen Paul,
Mr. Bodhisatya Ghosh.
...For the Respondent No.4**

The petitioner prays for extension of interim order passed by the Court restraining the Corporation from proceeding with the impugned order of demolition.

The Corporation directed the petitioner to remove/demolish the unauthorized tin shaded iron frame structure measuring about 79.245 sq.m. within 15 days from the date of issuance of the notice and in default the Corporation would take steps to demolish the same.

It is the specific case of the petitioner that a wooden structure existed at the subject place which got gutted because of fire. The petitioner is in occupation of the subject place for decades and is running a business from there. After the structure got damaged because of fire the petitioner was compelled to repair/reconstruct the same solely with the view to earn his livelihood.

At such point of time a complaint alleging unauthorized construction was lodged by the private respondent claiming to be the owner of the subject premises.

The Corporation inspected the site and found a tin shaded iron frame structure constructed without any building plan.

The Corporation and the private respondent submit that the construction that is in place right now is an unauthorized one and the same has been constructed without obtaining any sanction from the Corporation. Prayer has been not to interfere with the order of demolition.

It has been submitted by the learned advocate appearing for the petitioner and the private respondent that a civil suit in between the parties is pending consideration before the Learned Trial Court and an order of injunction has been passed restraining the petitioner from raising any construction.

An application for vacating has been filed by the private respondent. The Corporation has filed the affidavit-in-opposition.

It appears from the submissions made on behalf of all the parties that there are several factual issues which are required to be enquired into prior to passing the final order of demolition.

It has been contended by the petitioner that a concrete based structure existed at the subject place since long. Mere repairing/reconstruction work is being done only for the purpose of running the business.

The Corporation ought to verify from its records as to whether any structure existed at the subject site or not.

It has been submitted by the petitioner that the Corporation accepted taxes from the petitioner for running the business and for removal of the garbage. The petitioner claims to have running the business after obtaining necessary licenses from the concerned authorities.

Keeping the writ petition pending will not serve any purpose.

In view of the above, the instant writ petition is disposed of by directing the Corporation to verify its records and to ascertain as to whether or not any construction existed at the subject site prior to the same being gutted down by fire. If it appears that there was an existing plan according to which the structure was raised and the structure was in existence for decades together, as submitted by the learned advocate appearing for the petitioner, then the Corporation shall take necessary steps to grant permission to the applicant for reconstructing the subject structure in accordance with law.

The Corporation shall consider the matter after giving reasonable opportunity of hearing to all the necessary parties. The parties will be permitted to rely upon all documents in support of their respective stand.

As the petitioner does not claim any ownership of the subject land, the construction in question will not create any right or equity in favour of the petitioner. The civil rights of the parties shall be decided by the competent civil court.

The Corporation shall take steps in the matter at the earliest but positively within a period of twelve weeks from the date of communication of this order.

The impugned order of the Siliguri Municipal Corporation dated 17th August, 2023 shall be kept in abeyance till a fresh order is passed by the Corporation.

As the petitioner claims to be running the business as per the licenses granted by the competent authorities, the Municipality shall not cause any hindrance in the running of the business as long as the licenses are in place.

The writ petition and all connected applications stand disposed of.

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

(Amrita Sinha, J.)