

25-07-2019
Court No.1
Sh/01.

**CIRCUIT BENCH OF
CALCUTTA HIGH COURT
AT JALPAIGURI
WRIT APPELLATE JURISDICTION
APPELLATE SIDE**

**M.A.T. 15 OF 2019
WITH
IA. C.A.N. NO. 01 OF 2019**

Anip Saha & Anr... . . Appellants.
Vs.
Siliguri Municipal Corporation & Ors. . . Respondents.

Mr. Joyjit Chowdhury,
Mr. Ajay Singhal.
. . .For the Appellants.
Mr. Soumya Dasgupta,
Mr. Kumar Shantanu.
. . .For the Respondents.

This mandamus appeal is arising out an order dated July 16, 2019, passed by the learned single Judge in connection with demolition case initiated by the Siliguri Municipal Corporation.

Learned counsel appearing on behalf of the respondent has submitted that the petitioner has made unlawful and illegal construction by raising additional floor without any authority of law.

It appears that a submission was made before the learned Single Judge that a representation is pending before the Commissioner of Municipality with regard to the demolition case initiated by the Municipal Authority. On the basis of the said submission the Learned Single Judge disposed of the writ application by directing the Commissioner to consider the representation of the petitioners that was filed as far back as 24th September, 2015 and to dispose of the said

representation by passing a reasoned order within six weeks from the date of communication of the said order. However, learned Single Judge did not grant any stay of operation of the demolition order.

Learned counsel appearing on behalf of the appellants submits that in the event the demolition order is given effect to, the purpose of the representation would be rendered infructuous.

The learned counsel appearing on behalf of the Municipal Authority has submitted that notice has also been served upon the appellants in terms of the order dated 16th July, 2019.

Having regard to the fact that in the event the order of demolition is given effect to, that might render the representation infructuous and taking into consideration that in the event the commissioner decides the matter in favour of the petitioner it would cause irreparable prejudice to the appellants in the event the order of demolition is given effect to, in the meantime, we modify the order passed by the learned Single Judge to the extent that till the Commissioner decides the matter in terms of the order dated 16th July, 2019, the Municipal authority shall not proceed with the demolition case. The order of demolition shall abide by the order to be passed by the Commissioner in disposing of the representation made by the appellants.

The Commissioner is directed to consider the representation in accordance with law without being influenced by any observations made in the order

dated 16th July, 2019 or of the observation made by this order.

The appeal and the connected application are disposed of without any order as to costs.

Since no affidavits have called for, the allegations made in the petition are deemed to have been denied by the respondents.

Photostat certified copy of this order, if applied for, be made available to the parties expeditiously on compliance of all requisite formalities.

(SOUMEN SEN, J)

(SUBHASIS DASGUPTA,J)