

24.11.2021
(S/L-44)
Ct.-18
(Susanta)

(Via Video Conference)

C.O. 16 of 2020

Nata Krishna Parua
-Vs-
Partha Prtaim Parua & Ors.

Mr. Somnath Roychowdhury,
Ms. Arpita Chowdhury,
.... For the Petitioner.

Mr. Abhishek Banerjee,
... For the O.P No. 1.

Mr. Gopal Chandra Das,
.... For the Tamralipta Municipality.

The defendant No. 5 in a suit for declaration and permanent injunction is the petitioner of the present revisional application under Article 227 of the Constitution of India which is directed against Order No. 18 dated December 09, 2019 passed by the 1st Court of learned Civil Judge (Junior Division), Tamluk, District-Purba Medinipur in the said suit being Other Suit No. 83 of 2018.

The plaintiff in the said suit, inter alia, has challenged a notice issued by the concerned authority of opposite party no. 4/ municipality for demolition of alleged unauthorized construction.

In the said suit, the petitioner has filed an application under Order VII Rule 11 of the Code of Civil Procedure for rejection of the plaint of the said suit on the ground that in view of the availability of the appeal under Section 218(3) of the West Bengal Municipal Act 1993 (hereinafter referred to as the

“said Act” in short) against the order of demolition, the said suit is not maintainable.

The learned Trial Judge by the order impugned has dismissed the said application.

In course of hearing of the present revisional application it is revealed that the impugned notice of demolition is not backed by any order of the Board of Councilors of the said Municipality as required under Section 218(1) of the said Act of 1993.

Mr. Somnath Roychowdhury, learned advocate for the petitioner as well as Mr. Gopal Chandra Das, learned advocate for the Tamralipta Municipality fairly concede that a fresh hearing on the complaint of alleged unauthorized construction is necessary.

C.O. 16 of 2020 is disposed of with a direction upon the opposite party no. 4 to decide the complaint of the petitioner regarding unauthorized construction afresh, expeditiously in accordance with law within a period of four months from the date of communication of this order.

There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)