

**SMT. REKHA RANI NANDI VS. THE
COMMISSIONER, MAYOR IN COUNCIL,
CHANDANNAGAR MUNICIPAL CORPORATION & ORS.**

(Through Video Conference)

Mr. Ankit Agarwal
Mr. Alotriya Mukherjee
..for the petitioner
Mr. Suman Basu
..for the Municipal Corpn.
Mr. Ayanava Bhattacharya
..for the opposite party no.5

This revisional application arises out of an order dated January 25, 2021, passed by the learned Civil Judge, Senior Division, Chandannagar, District Hooghly in Title Appeal No. 66 of 2019.

By the order impugned, the learned Court below refused to grant an ad-interim order in favour of the petitioner on the ground that the petitioner failed to make out a prima facie case for interference of the lower appellate Court against the order of demolition passed by the Commissioner, Chandannagar Municipal Corporation, one of the defendants in the suit.

Mr. Ankit Agarwal, learned Advocate for the petitioner draws the attention of the Court to the ad-interim order of status quo, which was granted in Title Appeal No. 66of 2019 by the learned Trial Judge. It is the

contention of Mr. Agarwal that once the status quo order was being enjoyed till the suit was dismissed being barred by law, the learned lower appellate Court ought to have passed the order of injunction in favour of the petitioner. If the said demolition is not stayed, pending disposal of the appeal the appeal will become infructuous.

Mr. Bhattacharya, learned Advocate for the opposite party no.5 submits that on the self same cause of action, a writ petition is pending before this Court being WPA 8858 of 2021 and as such the petitioner cannot be allowed to continue with parallel proceedings.

Mr. Basu, learned Advocate for the Chandannagar Municipal Corporation also submits that in view of the factual background in this case and the number of litigations initiated by the petitioner, no interim order should be granted to the petitioner.

Record reveals that the order of demolition was passed pursuant to a decision of this Court dated February 25, 2015 in WP 4999(W) of 2015. The said order of demolition was challenged by the petitioner in WP 14301(W) of 2017. The order of demolition was not set aside by the learned single Judge and the petitioner went up in appeal by filling M.A.T.2192 of 2017. M.A.T. 2192 of 2017 was disposed of with liberty to the petitioner to get the issue adjudicated in a Civil Court,

upon recording that the order of the learned single judge was correct. Accordingly, the petitioner filed a suit being Title Suit No.66 of 2019. The Title Suit No. 66 of 2019 was dismissed. The said suit was dismissed on the ground that the remedy of the petitioner would lie before the Municipal Building Tribunal.

Aggrieved by the aforementioned order, the Title Appeal was filed. In the Title Appeal, the petitioner prayed for an order of status quo with regard to the alleged demolition, which was rejected. Hence this revisional application. With regard to the prayer for status quo before this Court, I find that the petitioner has not been able to obtain any protective order in the three rounds of litigation initiated by the petitioner before this Court. Neither the learned Single Judge nor the Division Bench had stayed the demolition in the writ petition or in the appeal.

Thus, in my opinion, the petitioner has not been able to make out a prima facie case. The issue has to be decided in the appeal pending. In view of the issues raised, the appeal should be disposed of expeditiously on merits. The petitioner shall be at liberty to raise all questions permitted under the law including the ground of non existence of the Building Tribunal. The learned lower Appellate Court will consider all grounds in the appeal in accordance with law on the basis of the law

operating in the field and the existing situation as per the submissions made of the respective parties. The appeal shall be disposed of within a period of one month from the date of communication of this order.

This Court has not gone into the merits of the claims of the petitioner but has restricted the order only on the prayer for an ad-interim order of status quo.

The appeal will be heard on its own merits.

This revisional application is disposed of.

There will be however no order as to costs.

Urgent photostat certified copy of this order be given to the parties on priority basis, if the same is applied for.

(Shampa Sarkar,J.)