

**Calcutta High Court
In The Circuit Bench at Jalpaiguri**

CO 9 OF 2022

**Sri Pradipta Sarkar
Vs.
Siliguri Municipal Corporation & Ors.**

Mr. Sarbojit Chwodhury, Advocate
... for the petitioner

Mr. Arun Kr. Sarkar, Advocate
Mr. Abhijit Sarkar, Advocate
Mr. Kartik Majumdar, Advocate
... for the opposite parties

The revisional application is directed against the judgment and order dated December 17, 2021 passed by the learned District & Sessions Judge, Darjeeling in Misc. Appeal No. 5 of 2021.

By the impugned judgment and order, the learned District Judge was pleased to affirm the order under appeal.

The petitioner filed a suit being Title Suit No. 145 of 2021 against the opposite parties claiming inter alia for a decree of declaration that the suit property which includes the newly constructed building was constructed by the petitioner in accordance with the sanctioned plan. The petitioner also prayed for decree of declaration that the opposite parties should not demolish any portion of the suit property and a declaration that notices issued by the

opposite parties were illegal and unlawful. In such suit, the petitioner applied for injunction restraining the opposite parties from giving effect to the notices dated July 3, 2021 and July 16, 2021 and for an injunction restraining the opposite parties from demolishing any portion of the suit property and disturbing the peaceful possession of the petitioner therein.

By the order dated August 3, 2021, the learned Trial Judge was pleased to appoint an Assistant Engineer, Public works Department (Civil), Siliguri Sub Division to cause scientific investigation of the suit building and find out whether there was any violation or deviation of the sanctioned site plan of such building.

Being aggrieved by such order, an appeal was preferred by the petitioner being Misc Appeal No. 5 of 2021.

In the appeal, elaborate arguments were advanced on behalf of the petitioner with regard to the necessity for a local inspection as directed by the learned Single Judge.

Considering the nature of the suit and the requirement of the learned Single Judge to understand the subject matter of the suit by way of a local inspection, the learned Appeal Court was pleased to affirm the order dated August 3, 2021

passed by the learned Single Judge and dismissed the appeal.

It is contended on behalf of the opposite parties that the appeal itself was not maintainable. Such issue need not be gone into in the present revisional application since the order of the Appeal Court is an affirmation of the order passed by the learned Single Judge.

The impugned order of the Appellate Court contains elaborate reasons as to why a local inspection was required in the facts and circumstances of the present case. There is no material irregularity in the impugned order warranting an interference under Article 227 of the Constitution of India.

In such circumstances, CO 9 of 2022 is dismissed without any order as to costs.

(Debangsu Basak, J.)

