

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A 2017 of 2023

**Ashoke Kumar Roy
-versus
Bally Municipality & Ors.**

**Mr. Tulshidas Ray,
Mr. Tirthankar Roy.
...For the Petitioner.**

**Mr. Sandipan Banerjee,
Mr. Ankit Sureka,
Mr. Sobhan Majumder.
...For HMC.**

**Ms. Chama Mookherji,
Mr. Ram Chandra Guchhait.
...For the State.**

**Mr. Ayan Banerjee,
Ms. Debasree Dhamali,
Ms. Riya Ghosh.
...For the Bally Municipality.**

**Mr. Animesh Paul.
...For the Private Respondent.**

The petitioner prays for a direction upon the Bally Municipality for cancellation of the plan sanctioned in favour of the private respondent.

There is a suit pending by and between the petitioner and the private respondent seeking declaration and permanent injunction.

The Learned Court below in Title Suit No. 1027 of 2021 passed an order on 28th September, 2021 by allowing the ad interim injunction of the plaintiff/

petitioner herein restraining the sole defendant, the private respondent herein from disturbing the peaceful possession of the plaintiff in respect of the scheduled property.

The Municipality is not a party in the said suit.

The petitioner contends that despite being aware of the order of ad interim injunction, the Municipality proceeded to sanction building plan in favour of the private respondent.

Learned advocate appearing for the Municipality submits that there is no order restraining the Municipality from sanctioning any plan in favour of the private respondent. There is also no order restraining the private respondent from changing the nature and character of the suit property. The Municipality not being a party in the suit may not be bound by any order passed therein.

It appears from the submissions made on behalf of all the parties and on perusal of the documents placed before this Court that the petitioner was successful in obtaining an order of ad interim injunction restraining the private respondent from disturbing his peaceful possession.

Apart from the above, there is no restraint order in respect of the suit premises.

The Municipality proceeded to sanction the plan and the private respondent is raising construction on the basis of the same.

It does not appear that the order of the Court has been violated in any manner whatsoever or the Municipality acted contrary to the provision of law.

Learned advocate appearing for the petitioner submits that application has already been filed before the Learned Court below seeking necessary restraint order.

As on date, there is no order restraining either the Municipality to sanction plan for raising construction or the private respondent for making construction on the suit property.

In view of the above, no relief can be granted to the petitioner in the instant case.

It will be open for the petitioner to approach the appropriate forum where the title suit is pending for obtaining necessary restraint orders, if so advised.

The writ petition fails and is hereby dismissed.

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

(Amrita Sinha, J.)