

D/L
Item No 9
18.05.2023
KOLE

**MAT 871 of 2023
With
IA No. CAN 1 of 2023**

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

*Mr. Asit Kr. Routh,
Mr. Tulsi Das Roy,
Mr. T. Roy,*

...for the appellant.

*Mr. Ayan Banerjee,
Ms. Debarsee Dhamali,
Ms. Riya Ghosh,*

...for the Municipality.

*Mr. Aniruddha Chatterjee,
Mr. Animesh Paul,*

...for the respondent no. 6..

By consent of the parties the appeal and the application are taken up for hearing together.

A judgment and order dated April 17, 2023, whereby the appellant's writ petition being WPA 2017 of 2023 was dismissed, is under challenge in this appeal.

The appellant approached the learned Single Judge with a prayer for a direction upon the Bally Municipality to cancel the building plan sanctioned in favour of the private respondent. The learned Judge noted that the Municipality is not a party to the suit. A suit has been filed by the writ petitioner against the private respondent herein claiming several reliefs which all indicate that there are civil disputes between the parties concerning the land in question. The learned Judge came to the conclusion after considering the material on record that nothing stood in the way of the

Municipality to sanction the building plan in favour of the private respondent herein. The writ petition was dismissed. Hence this appeal at the instance of the writ petitioner.

We have heard learned Counsel for the parties. Admittedly a suit being Title Suit No. 1027 of 2021 is pending before the Learned Civil Judge (Jr. Division), 1st Court at Howrah, at the instance of the writ petitioner herein against the private respondent. It also appears that an application has been made by the appellant herein in that suit praying for an order of injunction against the defendant in that suit being the private respondent herein to restrain him from raising any construction by encroaching the 'suit property' or create any third party interest in respect of the same. In that view of the matter, we are not inclined to entertain any prayer of the appellant to pass further orders of restraint against the private respondent herein.

Learned Counsel for the appellant says that the grievance with which the writ petitioner approached the learned Single Judge is that the Municipality ought not to have sanctioned building plan in favour of the private respondent. He says that the writ petitioner has made several representations to the Municipality for cancellation of the building plan sanctioned in favour of the private respondent. If such representations have been made, the same will be disposed of by the Appropriate Authority in the Municipality in terms of Section 217 of the West Bengal Municipal Act, 1993, after giving an opportunity of hearing to all concerned parties including the appellant and the

private respondent herein. Such exercise will be completed within three months from the date of communication of this order to the Appropriate Authority in the Municipality.

Since we have not called for affidavits, the allegations made in the stay application are deemed not to be admitted by the respondents.

The appeal and the connected application are, accordingly, disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Apurba Sinha Ray, J.) (Arijit Banerjee, J.)