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**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

C.O. 2682 of 2022

Ananda Pramanik

versus

Niyati Ghosh & ors.

Mr. Manas Kumar Das
... for the petitioner

Mr. Arup Krishna Das
Ms. Ipsita Ghosh
... for the opposite party no.1

Affidavit of service filed on behalf of the petitioner
is taken on record.

This is an application under Article 227 of the
Constitution of India filed by the defendant/petitioner
challenging order No.44 dated 16th August, 2022 passed
by the learned Civil Judge (Junior Division), 2nd Court,
Kandi, Murshidabad in Title Suit No.104 of 2017.

The brief fact of the case is that the plaintiff filed a
suit for declaration and injunction. In the said suit at
the instance of the plaintiff a *status quo* order was
passed. The plaintiff filed an application under Section
151 of the Civil Procedure Code for removal of
obstruction of the drain within 'kha' schedule property.
Learned Advocate Commissioner was appointed by the
Trial Court to submit report. The Advocate
Commissioner submitted report. Upon considering the

report of the Advocate Commissioner, the learned Trial Court directed the parties to stop the work of construction and remove the obstruction over the 'kha' schedule drain.

Being aggrieved by and dissatisfied with the impugned order, the defendant has preferred the present revisional application.

Mr. Manas Kumar Das, learned Advocate for the petitioner/defendant submits that the defendants have undertaken the work of construction under the scheme of 'Pradhan Mantri Awas Yojana' and they have not obstructed the *nalah* in the manner whatsoever.

Mr. Arup Kumar Das, learned Advocate for the opposite party, in reply, submits that the commissioner's report clearly shows obstruction of 'kha' schedule drain and thus the order of the trial court for removal of obstruction should not be interfered with.

The plaintiff filed an application under Section 151 of the Civil Procedure Code contending that while raising construction work the defendants have obstructed the drain within 'kha' schedule property. The learned Trial Court appointed Advocate Commissioner to determine and assess the actual state of affairs. The Commissioner submitted its report. The report of the Commissioner shows obstruction of drain over '*Kha*' Schedule property. Basing on such Advocate Commissioner's report the learned Trial Court directed the defendant to stop his

work of construction and remove the obstruction over the '*Kha*' schedule drain. Thus, it is found that there is no impropriety in the order passed by the learned Trial Court.

In the result, the revisional application being **C.O. 2682 of 2022** fails and the same is dismissed.

All connected applications, if any, stand disposed of.

Interim order, if any, stands vacated.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of necessary legal formalities.

(Bivas Pattanayak, J.)