

S/L 21
03.05.2023
Court. No. 12
Sourav

CO 3939 of 2019

Sri Uttam Kumar Shaw
Vs.
The Naihati Municipality & ors.

Mr. Sourav Sen
Ms. Adrisnata Chakraborty

...for the petitioner.

Mr. Soumyajit Bhatta
Mr. Zahid Ali Khan

...for the opposite party no. 4.

1. Both the petitioner and the private opposite party no. 4 are represented by their respective learned advocates. None appears on behalf of the opposite party nos. 2 and 3 in the instant proceeding.
2. Heard learned advocate for the petitioner and learned advocate for the private opposite party no. 4 at length.
3. The instant revisional is now taken up for passing appropriate order.
4. In this revisional application, the order no. 2 dated 05.11.2019 passed by the learned Civil Judge (Junior Division), First Court at Barrackpore, North 24 Parganas in Misc. Appeal No. 1 of 2019 has been assailed.
5. By the impugned order, learned Trial Court in the aforementioned Misc. Appeal as has been preferred challenging the memo dated 05.03.2019 (the photocopy of which has been filed along with the instant revisional application at Page no. 51) refused to pass an order of stay upon the said memo dated

05.03.2019 issued by the Chairman, Naihati Municipality.

6. Mr. Sen, learned advocate for the petitioner at the very outset draws attention of this Court to the Page No. 51 of the instant revisional application being photocopy of the memo dated 05.03.2019 as issued nby the Chairman, Naihati Municipality and as has been impugned before the learned Civil Judge (Junior Division), First Court at Barrackpore, North 24 Parganas in Misc. Appeal No. 1 of 2019. It is contended by Mr. Sen, that by the impugned memo an order of demolition of the alleged unauthorized construction was directed. It is further submitted by Mr. Sen that in the event the stay as prayed for is not granted, the very purpose of filing Misc. Appeal No. 1 of 2019 before the learned first appellate court would become infructuous.
7. Mr. Bhatta, learned advocate for the opposite party no. 4, however, opposes such contention. It is contended on behalf of the opposite party no. 4 that since before the learned first appellate court, the present petitioner has miserably failed to make out his prima facie case for obtaining an order of stay, learned Trial Court is very much justified in passing the impugned order. It is also submitted by Mr. Bhatta, that by the impugned memo dated 05.03.2019 no demolition order was passed and on the contrary, demolition order as passed by the competent authority has been communicated only.

8. On perusal of the entire materials as placed before this Court and after hearing the learned advocate for both the sides, it appears to this Court that in the event, the stay as prayed for before the learned Trial Court by the present petitioner is not granted and in the event, the demolition of the suit property at the instance of the opposite party no. 1 to 3 have been carried out in the meantime the very purpose of filing Misc. Appeal No. 1 of 2019 would become infructuous.
9. Considering the every pros and cons of the matter as placed before this Court, this Court while disposing of the instant revisional application thus directs the learned Civil Judge (Junior Division), First Court at Barrackpore, North 24 Parganas to dispose of the Misc. Appeal No. 1 of 2019 within a period of three months from the date of communication of this order and till disposal of the Misc. Appeal No. 1 of 2019, there shall be a stay of the operation of the communication dated 05.03.2019 as made by the Chairman, Naihati Municipality in respect of demolition of premises no(s). H/no. 50 and 50/B, Girish Ghosal Road, P.O. Garifa, P.S. Naihati, District – 24 Parganas North, Pin- 743166. It is, however, made clear that the time limit for disposal of Misc. Appeal No. 1 of 2019 by the learned first appellate court shall have mandatorily to be followed.
10. Department is hereby directed to forward a copy of this order along with the case record of Misc. Appeal

No. 1 of 2019 to the the learned Civil Judge (Junior Division), First Court at Barrackpore, North 24 Parganas at the earliest and department is further directed to forward a copy of this order along with the file bearing Memo No. 4362 of 2019 in connection with premises no. H/No. 50 & 50B, Girish Ghoshal Road, P.O. Garifa, P.S. Naihati, North 24 Parganas to the Chairman, Naihati Municipality.

11. The above LCRs are to be sent through Special Messenger and the cost of which shall have to be deposited by the present revisionist **within seven days** from the date of passing of this order.
12. With the abovementioned observation, the revisional application being **CO 3939 of 2019** is disposed of.
13. Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Partha Sarathi Sen, J.)