

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

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

**MAT/3/2025
With
IA NO: CAN/1/2025**

**JAGADDHATRI CONSTRUCTION REPRESENTED BY ITS
PARTNER MR. SUMANTA BANERJEE AND ANR.
VS
ALOK BANDYAPADHYAY AND ORS.**

For the Appellants	:	Mr. Sardar Amjad Ali, Ld. Sr. Adv. Mr. Dilip Kumar Samanta, Mr. Biswapriya Samanta, Mr. Suhotro Palit, Advocates
For the State	:	Mr. Rajarshi Basu, Mrs. Rupsha Chakraborty, Advocates
For respondent no. 1	:	Mr. Baidurya Ghoshal, Mr. Saikat Mukherjee, Advocate

Heard & Judgment on : January 21, 2025

DEBANGSU BASAK, J.

1. Appeal is at the behest of the private respondent in the writ petition.
2. Appellant is aggrieved by the order dated November 26, 2024 passed in WPA 18644 of 2023 by which, learned single Judge directed

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Board of Councillor of Sonamukhi Municipality to issue a notice of hearing to the private respondent concerning alleged unauthorized construction and to issue a demolition order in respect of any construction found to be unauthorized.

3. By consent of the parties appeal is taken up for final hearing.

4. Learned senior advocate appearing for the appellants submits that, the writ petitioner filed a civil suit being Title Suit No. 40 of 2023 in Court of the learned Civil Judge, Senior Division at Bishnupur where, appellant no.2 is a party defendant. He draws the attention of the Court to the prayers made in the plaint of Title Suit No. 40 of 2023. He submits that issue of unauthorized construction is an issue in such civil suit.

5. Learned senior advocate appearing for the appellants submits that, in such civil suit there subsists an order of injunction dated April 29, 2023. He submits that, the order of injunction injuncts both the parties to the civil suit from creating any third party interest over the suit property. Both the parties to the civil suit were directed to main status quo with regard to the suit property. Suit property and the property involved in the writ petition are the same.

6. Learned senior advocate appearing for the appellants submits that, the writ petitioner suppressed the factum of filing of the civil suit and the order of injunction passed in such civil suit.

7. Learned senior advocate for the appellants submits that, the appellants obtained a sanction for a G+4 storied building after applying for a sanction of G+7. Appellants constructed G+4 building. Thereafter, appellants applied for additional floors. He points out that, the application for grant of sanction of the additional floors was not decided by the concerned municipality. Therefore, in accordance with the provisions of the

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West Bengal Municipal Act, 1993 particularly, Section 208 thereof, municipality is deemed to grant sanction to the construction of the additional floors.

8. Learned senior advocate appearing for the appellants submits that, learned single Judge erred in directing consideration of the issue of unauthorized construction in view of the pendency of the civil suit. Moreso, in view of the interim order of maintenance of status quo passed by the civil Court.

9. State and the private respondent are represented.

10. Learned advocate appearing for the writ petitioner/private respondent submits that, the appellants constructed G+7 much prior to the interim order being passed by the learned civil Court. He draws the attention of the Court to the letter dated January 31, 2023 issued by the municipality noting therein that, there was unauthorized construction at the behest of the appellant no.2.

11. Appellants applied for sanction of a G+7 building with the concerned municipality. Municipality granted sanction for construction of G+4. Appellants apparently applied for revised sanction for G+7, which was granted. Appellants suffered a notice dated January 31, 2023 issued by the municipality stating that, appellant no.2 is guilty of unauthorized construction and constructing beyond the sanctioned building plan.

12. As on date, it is submitted at the Bar that, there is a structure which is in excess of G+4, at the locale. Sanction exists for G+4.

13. Construction in excess of G+4 cannot be shielded by Section 208 of the West Bengal Municipal Corporation Act, 1993. Appellants applied for G+7 structure which was not granted. What was granted was permission for G+4. Thereafter, appellant no.2 proceeded to make construction in

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violation of such grant of sanction of G+4. Appellant no.2 suffered a notice dated January 31, 2023 in respect of the illegal construction. In the factual matrix of the present case, benefit of Section 208 of the Act cannot be extended to the appellant no.2.

14. Fact which is alleged to be suppressed must be of a fact relevant to the issue in the lis.

15. No doubt, there is a civil suit pending between the private parties where there subsists an order of injunction. The prayers in the plaint in the civil suit are as follows:

(i) not to make any illegal construction over the suit property without any proper sanction plan/permission from the Competent Authority.

(ii) not to sale/transfer/alienate the suit property to any intending purchaser without sanction plan

(iii) not to sale/transfer/alienate the suit property to any intending purchaser without giving the proportionate rightful share of the owners

(iv) To maintain status quo till the disposal of the suit

(v) Cost of the Suit

AND

Pass such other order/orders as your Honour may deem fit & proper."

16. Prayers in the writ petition are as follows:-

“(a) A writ and/or order or orders and/or direction and/or directions in the nature of Mandamus directing the concerned respondent municipality being the respondent no. 2 herein to demolish the illegal construction at the said premises at the instance of the private respondents forthwith;

(b) A writ and/or order or orders and/or directions in the nature of Mandamus directing the concerned respondents, to consider the demand of justice given on 04.01.2023, requesting them to take immediate steps to demolish the

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illegal construction at the said premises at the instance of the private respondent forthwith;

(c) A writ and/or order or orders and/or direction and/or directions in the nature of Certiorari directing the concerned respondents, to produce relevant documents before the Hon'ble Court.

(d) Rule Nisi in terms of prayers (a), (b) and (c) as above;

(e) In the event the Respondents and each one of them fail to show cause or sufficient cause, the Rule so to be issued be made absolute;

(f) Such other or further order or orders as to your Lordship may deem fit and proper."

17. In the suit, the writ petitioner/private respondent seeks a decree for permanent injunction restraining the appellants from making any illegal construction over the suit property. In the writ petition, writ petitioner/private respondent seeks a direction upon the municipality to remove the illegal construction.

18. In such factual matrix, it cannot be said that, the writ petitioner/private respondent is guilty of suppression of material fact. Neither the plaint of the civil suit nor the order of the civil Court passed therein would materially affect the decision that was arrived at by the learned single Judge in the writ petition.

19. Issue of unauthorized construction is required to be decided. Construction which is claimed to be unauthorized was made prior to the suit being filed. Suit seeks to prevent illegal constructions subsequent to the filing. Legality and validity of the construction existing at the time of the institution of the suit is not the subject matter of the suit. Municipality is the best authority to decide on the legality and validity of the construction. Learned single Judge directed that to be undertaken. Significantly, although the appellant no.2 suffered a notice dated January

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31, 2023, by which the municipality stated that appellant no.2 was guilty of unauthorized construction, it did not challenge such letter.

20. In such circumstances, we find no merit in the present appeal.

21. MAT/3/2025 along with connected application are **dismissed** without any order as to costs.

(Debangsu Basak, J.)

22. I agree.

(Md. Shabbar Rashidi, J.)

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