

Item No. - 15
26.02.2025
Rohan
Court No. 8

**In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side**

**FMA 147 OF 2025
with
I.A. No.: CAN 1 of 2025**

**Tapan Kumar Dutta
Versus
The State of West Bengal & Ors.**

**Ms. Madhumita Patra,
Mr. S. Chakraborty**

... for the appellant

**Mr. Rajarshi Basu,
Mr. Srinath Singha Roy**

... for the State

Mr. Soumyajit Bhatta

... for the respondent Nos. 2 to 4

1. The writ petition was filed by the respondent Nos. 2 to 4 assailing the order of demolition passed by the Board of Councilors of the Baranagar Municipality in relation to a residential building located at 31, Subhas Nagar, P.S. – Baranagar, Kolkata – 700090. The appellant was arraigned as a private respondent therein for the reason that on his complaint, the proceeding for demolition was initiated and the order was passed by the Board of Councilors.
2. At the time of hearing of the writ petition, it was brought to the notice of the Single Bench that some of the flat owners have already preferred the Miscellaneous Appeal before the learned Civil Judge (Junior Division) at Bidhannagar along with an application for condonation of delay which is still pending. The learned Single Judge after noticing the

aforementioned facts, disposed of the writ petition permitting the respondent Nos. 2 to 4, the writ petitioners, to approach the said forum assailing the self-same order within a specified period and further granted an unconditional stay of the order of demolition. The appellant has challenged the said order on the score that the Court ought not to have relegated the parties to the proceedings which has not ensued as yet nor should pass an order of stay even for a limited duration.

3. Our attention is drawn to Section 218 of the West Bengal Municipality Act, 1993 which envisaged that the Board of Councilors, after being satisfied that the erection of any building has commenced without obtaining any sanction or permission under the law or is being carried on or has been completed otherwise then, in accordance with the particulars on which such sanction or permission was based, or after such sanction or the permission was lawfully withdrawn, may after giving a reasonable opportunity to the owners of the building, direct the erection, alteration, addition or projection as the case may be, to be demolished or altered. Sub-section 3 of Section 218 of the said Act provides a remedy of appeal against the order of the Board of Councilors before the Court having jurisdiction.
4. The Writ Court should not exercise a discretion, the moment it is evident that the efficacious alternative remedy is provided in the statute, though there is no absolute bar in this regard but the Courts have imposed self-restraint in entertaining the writ petition and may at times refused to exercise such discretion and relegate the parties to exhaust the remedies provided in the statute. The aforesaid principle is founded upon a rule of discretion not of compulsion.

The moment the Court exercise the discretion in relegating the parties to exhaust the remedies available in the statute, such discretion cannot be said to be irrational, unreasonable or beyond the settled proposition of law. There is no fetter on the part of the Court to protect the interest of the parties depending upon the nature of the order and the consequences to follow.

5. We, thus, do not find an infirmity and/or illegality in the impugned order.
6. The mandamus appeal being **FMA 147 of 2025** is hereby dismissed.
7. Consequently, the application being **CAN 1 of 2025** is also dismissed.
8. No order as to costs.
9. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance with all requisite formalities.

(HARISH TANDON, J)

(PRASENJIT BISWAS, J)