

Form No. J (2)

**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

**FMA 478 of 2024
IA NO: CAN/1/2024**

**Smt. Sanjaita Sana
vs.
The Bhadreswar Municipality & Ors.**

For the Appellant : Mr. Syed Nurul Arefin, Advocate
Mr. Rahul Singh, Advocate

Heard on : 16.01.2025

Judgment on : 16.01.2025

DEBANGSU BASAK, J.:-

1. Affidavits filed in Court be taken on record.
2. None appears for the respondents despite service.
3. Appeal is at the behest of the writ petitioner and directed against an order dated January 2, 2024, passed in WPA 23369 of 2023.
4. By the impugned order, learned Single Judge noted that, there was a civil suit filed by the appellant relating to the alleged unauthorized

construction at the property concerned. Learned Single Judge, therefore, held that whether there was any encroachment of private land belonging to the appellant cannot be decided by the Municipality and would be decided in the pending Title Suit. Learned Single Judge disposed of the writ petition of the appellant.

5. Learned advocate appearing for the appellant submits that, the appellant is complaining of a sanction being granted beyond the building rules in favour of the private respondents. Appellant is also complaining that, despite an order dated September 22, 2022 passed in Title Suit No.331 of 2022, the private respondents are constructing in violation of such order. According to him, these issues can be looked into by the concerned Municipality and appropriate steps taken. He draws the attention of the Court to the plaint of Title Suit No.331 of 2022 where, the private respondents are defendants. The Chairman of the concerned Municipality was made a pro forma defendant in such suit.
6. Prayers in Title Suit No.331 of 2022 are as follows:-

“17) That the plaintiffs pray for:

- a) A Decree of declaration that the defendants have no right to erect and to make construction without leaving statutory 4’ft space from boundary wall of the Plaintiff as per Municipal Law as described in the schedule “C” herein below.***

- b)** *A decree of declaration that the defendants have got no right to construct upon the boundary wall demolish the wall as particularly described in the schedule “C” herein below.*
- c)** *A decree of mandatory injunction directing the defendants to restore the portion of the boundary wall which has already been demolished by the defendants.*
- d)** *For a decree of permanent injunction restraining the defendants from their illegal construction made upon the said boundary wall as described in the schedule “C” herein below.*
- e)** *Cost of the suit,*
- f)** *Any other relief/reliefs fit and proper under law equity.”*

7. In such Title Suit, an ad interim order of injunction dated September 22, 2022 was passed by the learned Civil Judge restraining the defendants in such civil suit from constructing in the western portion without abiding by the Municipal laws relating to the statutory space as applicable therein as amended.
8. As noted above, order dated September 22, 2022 is an ad interim order of injunction. Nothing is placed on record that the ad interim order of injunction was confirmed by the learned Civil Judge.

9. Thereafter, the writ petitioner approached the Writ Court by way of a writ petition being WPA 23369 of 2023. Prayers in such writ petition are as follows:

- A) A writ in the nature of Certiorari do issue directing the concerned respondent, his men, agents, officers, subordinates and/or assigns to transmit all records pertaining to the instant case to this Hon'ble High Court so that this Hon'ble Court may certify the same and conscionable justice may be administered.*
- B) A writ in the nature of Mandamus directing the Respondent municipal Authorities to immediately demolish all illegal construction made by the private respondents on the southern and western boundary wall of the petitioners premises being Premises no.21, Ferry Ghat Street, P.O. Telinipara, P.S. Bhadreswar, District Hooghly-712125.*
- C) A writ in the nature of Mandamus directing the Respondent municipal Authorities to demolish all illegal construction made by the private respondents within the statutory vacant space beyond the boundary wall of the petitioner premises being no. 21, Ferry Ghat Street, P.O. Telinipara, P.S. Bhadreswar, District Hooghly- 712125.*
- D) A writ in the nature of Mandamus directing the Respondent Municipal authorities to immediately sanction the building plan submitted by the petitioner on 22nd August 2022 and thereby allow construction*

of the residential house of the petitioner in premises no.

E) Rule NISI in terms of the prayers (A) to (D) above.

F) An interim order directing the respondent municipal authorities to take immediate steps to stop all work of construction being made by the private respondents in their premises which is located on the southern and western of the petitioner's premises no. 21, Ferry Ghat Street, P.O. Telinipara, P.S. Bhadreswar, District Hooghly-712125 till the disposal of this writ petition.

G) Ad-interim order in terms of the prayers above.

H) Pass such other or further order or orders and/or direction or directions as to Your Lordship may seem fit and proper.”

10. Essentially, appellant seeks implementation of an ad interim order of injunction passed by a civil court in a pending civil suit. An ad interim order of injunction is open to variation, modification or non continuance thereof as the case may be by the Court passing such order. In any event, should there be any violation of such order of injunction, appropriate statutory remedies which are efficacious, effective and speedy are available to the appellant.
11. Learned Single Judge exercised discretion in not interfering in the writ petition filed at the behest of the appellant in such factual matrix.
12. We find no perversity in the exercise of such discretion of the learned Single Judge.

13. We find no ground to interfere with the present appeal.
14. **F.M.A. 478 of 2024** along with connected application are **dismissed** without any order as to costs.

(Debangsu Basak, J.)

15. I agree.

(Md. Shabbar Rashidi, J.)

CHC