

13.08.2025
Ct. No.3
Sl. No.4
akd

**W. P. A. 14430 of 2024
(C. A. N. 1 of 2025)**

[Rajat Saha -Vs- The State of West Bengal & Ors.]

Mr. Rajib Kumar Basu
... .. for the petitioner

Mrs. Arunima Lala
Mr. Ganesh N. Jajodia
Ms. Nitu Singh
Ms. Ritika Kedia
... for respondent no. 5

Mr. Jyoti Prakash Chatterjee
... .. for the State

Mr. Gautam Lahiri
... .. for the Municipality
[Serampore Municipality]

1. The petitioner has preferred the present writ petition challenging the building plan sanctioned by the respondent-Serampore Municipality in respect of Premises No. 6, Dr. T. P. Bhattacharya Street, P.O. Serampore, Dist. Hooghly, at the instance of the private respondent no.5.
2. It is the case of the petitioner that that he is the owner of Premises No. 6B, Dr. T. P. Bhattacharya Street, P.O. Serampore, Dist. Hooghly, whereas private respondent no.5 is the owner of Premises No. 6, Dr. T. P. Bhattacharya Street, P.O. Serampore, Dist. Hooghly. Both the properties share an attached roof and separated by a common boundary wall. The private respondent no.5 applied for sanction of the building plan concerning her portion of the building. Vide letter dated 22.02.2023, the petitioner objected to the same. The respondent-Serampore Municipality conducted hearing on 04.05.2023, 19.09.2023 and

19.12.2023 respectively, however, the outcome of such proceeding was never communicated to the petitioner.

3. The petitioner subsequently learnt that the respondent-Serampore Municipality had sanctioned the building plan in respect of Premises No. 6, Dr. T. P. Bhattacharya Street, P.O. Serampore, Dist. Hooghly. Following such action, the private respondent no.5 commenced demolition of the existing structure. As both the premises share an attached roof, the petitioner raised further objections.

4. Thereafter, the petitioner instituted Title Suit No. 644 of 2023 against the private respondent no.5 seeking to restrain her from demolishing the attached roof and common boundary wall. The respondent-Serampore Municipality was also impleaded as a party therein. Aggrieved by the sanctioning of the building plan in respect of Premises No. 6, Dr. T. P. Bhattacharya Street, P.O. Serampore, Dist. Hooghly, the petitioner has preferred the present writ petition.

5. The matter was listed before this Court on 03.12.2024, and after hearing the parties the Court passed the following order :-

“Prima facie, this Court is of the view that, given that the relevant building is a shared structure with a common roof and common walls, the Municipality should have consulted a qualified engineer to determine whether the proposed sanction in favour of respondent No. 5 would compromise the structural stability of the portion of the building belonging to the petitioner.

Accordingly, this Court directs the Municipality to appoint a duly qualified engineer to examine the issue as aforesaid and to file a report before this Court within one month from the date of this order.

The petitioner and respondent No.5 shall jointly bear the cost of the engineer’s services.

The appointed engineer shall inspect the premises, providing due notice to the parties, and shall consider any objections raised by the parties during the inspection.”

6. In pursuance of the said direction, the respondent-Serampore Municipality appointed Mr. Anand Shaw (Structural Engineer) to carry out an inspection of the premises in question. The inspection was conducted on 14.12.2024, in presence of both the petitioner as well as the private respondent no.5. The Structural Engineer vide letter dated 20.12.2024 recommended conducting of a Non-Destructive Test (NDT) for the entire building of two nos. of holding i.e. 6 & 6B, Dr. T. P. Bhattacharya Street, P.O. Serampore, Dist. Hooghly, at a joint estimated cost of Rs.2,00,000/-. In view of this court's earlier direction, both the parties were supposed to bear the cost equally.

7. The respondent-Serampore Municipality informed both the parties accordingly. The private respondent no.5 deposited her share of Rs.1,00,000/-. The petitioner, however, vide letter dated 07.01.2025, objected to the appointment and qualification of the said Structural Engineer and further stated that he was facing financial difficulties and was not in a position to pay his share of Rs.1,00,000/- for conducting Non-Destructive Test (NDT).

8. The private respondent no.5, thereafter, filed an application being CAN 1 of 2025, seeking refund of the amount deposited by her on the ground that the petitioner is not cooperating and facilitating in conducting the Non-Destructive Test (NDT), as directed by the Structural Engineer pursuant to the order passed by this Court on 03.12.2024.

9. Learned counsel for the private respondent no.5 submits that the petitioner has already filed a Title Suit No. 644 of 2023 and on the selfsame cause of action, he has got an order of injunction in his favour.

10. This Court has heard the arguments advanced by the learned counsel for the respective parties and has perused the materials placed on record.

11. The grievance of the petitioner pertains to the sanctioning of the building plan in respect of the premises in question, given both the petitioner and the private respondent no.5 share an attached roof and a common boundary wall, any demolition or construction activity is likely to cause damage to the petitioner's property. Considering such contention, this Court vide order dated 03.12.2024 directed the respondent-Serampore Municipality to appoint a duly qualified Structural Engineer to examine the building and submit a report. Pursuant thereto, an inspection was carried out by the Structural Engineer, who recommended a Non-Destructive Test (NDT) for assessing the structural stability of the building. Although the private respondent no.5 had deposited Rs. 1,00,000/-, her share of expense for conducting the said Non-Destructive Test, the petitioner failed to deposit his share citing financial constraints.

12. This Court is of the view that determination of the structural stability of the building is essential for adjudication of the matter. However, as the petitioner is unwilling to facilitate the Non-Destructive Test (NDT) by not contributing his share of the cost, this Court is unable to proceed with this matter any further at this stage.

13. It is further noted that a Title Suit is already pending before the learned Civil Judge (Junior Division) 2nd Court at Serampore, Hooghly wherein the petitioner has already obtained an order of injunction in his favour.

14. Accordingly, the present writ petition is dismissed.

15. The respondent-Serampore Municipality is directed to refund Rs.1,00,000/- deposited by the private respondent no.5 within a period of two weeks from the date of communication of this order.

16. In view of dismissal of the writ petition, the connected application being CAN 1 of 2025 is also disposed of.

17. Since no affidavits have been filed by the respondents, the allegations made in the writ petition shall not be deemed to have been admitted.

18. There shall be no order as to costs.

19. Let urgent Photostat certified copy of this order, if applied for, be supplied to the parties on usual undertaking.

(Gaurang Kanth, J.)