

19.06.2026
Court No. 12
Item No. 02
Sandip

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

M.A.T. 991 of 2026
I.A. No : CAN 1 of 2026

Noor Islam Mondal & Anr.
Vs.
The State of West Bengal & Ors.

Mr. Sourav Sen, Sr. Adv.,
Mr. Indrajit Bhattacharjee,
Mr. Sudip Naskar,
Ms. Atryee Basu Mallick
.....for the appellants.
Mr. Suresh Ch. Manna
....for the respondents.

- 1) This appeal arises out of an order dated June 09, 2026 passed in W.P.A. 382 of 2024.
- 2) By the order impugned the learned Court directed the Municipality to act in accordance with the provisions of the law and take expeditious steps.
- 3) The appellants are aggrieved by the said order on the ground that during the pendency of the statutory appeal before the learned Civil Judge, (Junior Division), 3rd Court at Alipore which was registered as Title Suit No. 543 of 2026, such order was passed. The effect of the order would render the challenge to the demolition proceeding infructuous. If the building is demolished in the meantime, before the statutory right of the appellants is exhausted, the situation would be irreversible.
- 4) Learned advocate for the writ petitioners submits that the Municipality had admitted

that the construction was made for commercial purpose, although the sanction was granted for a residential building.

5) We are not inclined to go into the factual disputes as the appeal court will decide the same. It also appears that the learned Court passed the order, on a misunderstanding that the appellants failed to obtain any protective order in respect of the premises in question, from the learned Civil Judge (Junior Division). On the contrary, we find that as a caveat had been lodged by the writ petitioners in the proceeding before the learned Civil Judge, the Court had rightly directed service of the appeal and the application upon the concerned defendants.

6) Under such circumstances, the order impugned is modified to the extent that the Municipality will not take any steps for a period of two months from the date of communication of this order. If the appellants are unable to obtain any protective order and/or an order of injunction staying the demolition within the aforementioned period, the Municipality may proceed in accordance with law. This order is being passed on the balance of equities. If the order of demolition is stayed for two months neither the Municipality nor the complainant will suffer serious injury.

7) On the other hand, if the person responsible for the construction is unable to avail of the statutory remedy of appeal and take a chance for an order of injunction or stay of the order of demolition, and the demolition takes place during the pendency of the appeal, the appellants will suffer irreparable loss and

injury and the situation will become irreversible. In the event the appellants have a chance of success in the appeal, prior demolition will lead to denial of justice. Thus, applying the principle of balance of convenience and inconvenience, we are of the view that the same is in favour of granting this limited protective order.

8) Accordingly, the appeal and the application are disposed of.

9) However, this order will not be construed as an observation by us on the merits of the case and will not be a recognition by us that, the construction is either valid or legal.

10) The learned Judge is requested to dispose of the appeal itself, as expeditiously as possible.

11) Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Shampa Sarkar, J.)

(Ajay Kumar Gupta, J.)