

Form No. J (1)

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

Present:

The Hon'ble Justice Biswajit Basu.

C.O. 310 OF 2022

CHANCHAL KUMAR DAS.
VS.
THE CHAIRPERSON, BOARD OF ADMINISTRATORS, RAJPUR SONARPUR
MUNICIPALITY & ORS.

For the petitioner:

Mr. Partha Pratim Roy,
Mr. Dibakar Bhattacharjee.

For the opposite party nos. 1, 2 & 3:

Mr. Mir Anuruzzaman.

For the opposite party nos. 4:

Mr. A.K. Gayan,
Ms. A.A. Gayen.

Heard on : 05.04.2022

Judgment on : 20.04.2022

Biswajit Basu, J.

1. The instant revisional application under Article 227 of the Constitution of India is arising out of an appeal under Section 218(3) of The West Bengal Municipal Act, 1993 (hereinafter referred to as the 'said Act' in short) and is directed against the order no. 5 dated January 21, 2022 passed by the 2nd

Court of learned Civil Judge (Junior Division) at Baruipur, District- 24 Parganas (South) in the said appeal being Other Appeal No. 01 of 2022.

2. What is the period of limitation in preferring an appeal under sub-section (3) of Section 218 of the said Act against an order of demolition or alteration of a building made by the Board of Councillors of a municipality under sub-section (1) thereof, is the issue falls for consideration in the present revisional application.

3. The relevant facts necessary to deal with the aforesaid issue are thus; the opposite party no. 4 filed a writ petition being W.P. No. 9041(W) of 2015 alleging that the petitioner has been carrying on unauthorized construction over the plot of land belonging to him and prayed necessary direction for demolition of the said construction.

The said writ petition was disposed of vide order dated August 17, 2016 by directing the Board of Councillors of the Rajpur-Sonarapur Municipality that in the event the said construction is found to be unauthorised, to pass necessary and consequential order under Section 218 of the said Act including the order of demolition, the petitioner by the said order was directed to maintain status quo with regard to the alleged unauthorised construction. The appeal against the said order was dismissed.

4. The said Board of Councillors, in terms of the aforesaid direction, on November 04, 2016 passed an order of demolition of the said alleged unauthorized construction. The Chairman of the said municipality under his letter bearing reference no. 1541/R.S.M./16 dated November 28, 2016

communicated the said order dated November 04, 2016 to the petitioner and directed him to demolish the said alleged unauthorized construction within seven days from the date of communication of the said order dated November 04, 2016.

The opposite party no. 4, alleging violation of the said order dated August 17, 2016 passed in said W.P. No. 9041(W) of 2015, filed an application for contempt being CPAN No. 1043 of 2017. The learned Single Judge by the order dated December 17, 2021 directed the said municipality to demolish the illegal construction of the building of the petitioner immediately.

5. The petitioner, aggrieved by the said order, preferred an appeal being MAT 1387 of 2021. In the said appeal, the petitioner alleged that the order of the Board of Councillors dated November 04, 2016 was never communicated to him. The Hon'ble Division Bench, in view of the limited scope of the said appeal refused to enter into the said question, however disposed of the said appeal by the judgment and order dated December 24, 2021, *inter alia*, granting liberty to the petitioner to challenge the order of demolition that had been passed by the Board of Councillors, as on November 28, 2016 i.e. communication of the Chairman of the said municipality about the order of demolition passed by the said Board of Councillors on November 04, 2016.

6. The petitioner, thereafter, challenging the said communication dated November 28, 2016 of the Chairman of the said municipality filed the said appeal. The opposite party no. 4 in the said appeal filed an application praying rejection of the said appeal and the application for stay thereto on the ground

that the appeal is barred by limitation. The Court below, by the order impugned, has allowed the said application thereby has dismissed the said appeal as barred by limitation but granted liberty to the petitioner to file a fresh appeal with a prayer for condonation of delay.

7. Mr. Partha Pratim Roy, learned advocate for the petitioner submits that the Court below has committed a gross error of law in fixing a period of limitation for an appeal under Section 218(3) of the said Act by treating such an appeal as an appeal under Order XLIII of the Code of Civil Procedure. He further submits that the statute which is providing the said right of appeal to the petitioner when has not prescribed any period of limitation, the Court by analogy cannot import a period of limitation for preferring the said appeal. Mr. Roy in support of his said contention refers to the decision of the Hon'ble Supreme Court in the case of **COLLECTOR OF CENTRAL EXCISE, JAIPUR vs. RAGHUVAR(INDIA) LTD.** reported in **(2000)5 Supreme Court Cases 299**. He further argues that the applicability of The Limitation Act, 1963 in respect of such an appeal since has been excluded by implication, the petitioner is not obliged, even to demonstrate that the said appeal was filed within a reasonable time. Mr. Roy to fortify his said argument places reliance on the decisions of the Hon'ble Supreme Court in the case of **UTTAM NAMDEO MAHALE vs. VITHAL DEO AND OTHERS** reported in **(1997) 6 Supreme Court Cases 73**.

8. The alternative argument of Mr. Roy is that the order of demolition dated November 04, 2016 passed by the said Board of Councillors was never communicated to the petitioner, however the Hon'ble Division Bench granted

liberty to the petitioner by the judgment and order dated December 24, 2021 to challenge the communication of the Chairman of the said municipality dated November 28, 2016 in appeal, immediately thereafter in the month of January, 2022, the said appeal was filed challenging the said communication, therefore it cannot be said that there was unreasonable delay in filing the said appeal. Mr. Roy refers to the decision of the Hon'ble Supreme Court in the case of **JOSEPH SEVERANCE AND OTHERS vs. BENNY MATHEW AND OTHERS** reported in **(2005) 7 Supreme Court Cases 667** to contend that the Hon'ble Supreme Court in the said decision has laid down what are the factors required to be considered in reckoning a reasonable time and if the said factors are taken into account, it can be safely concluded that the said appeal was filed within a reasonable time.

9. Mr. A.K. Gayen, learned advocate for the opposite party no. 4, on the other hand, submits that in terms of Section 16(2) of the said Act, the Chairman of the said municipality presides over the meeting in which the Board of Councillors passed the order of demolition, as such the communication by the Chairman is amounting to communication of the said order by the Board of Councillors and the said communication although was made on November 28, 2016 but the petitioner did not take any steps to challenge the said communication till the orders were passed in the contempt proceeding, therefore, according to him, the said delay since has been caused due to the laches and negligence of the petitioner, the petitioner is not entitled to condonation of the said delay. Mr. Gayen refers to the decision of Hon'ble

Supreme Court in the case of **ESHA BHATTACHARJEE vs. MANAGING COMMITTEE OF RAGHUNATHPUR NAFAR ACADEMY AND OTHERS** reported in **(2013) 12 Supreme Court Cases 649** to contend that the conduct of the parties is a relevant consideration in deciding the prayer for condonation of delay. He further submits that the validity of the building plan of the petitioner since has already expired, he cannot make any construction on the basis of the said plan.

10. Mir Anuruzzaman, learned advocate for the Municipality submits that the order of demolition was passed by the Board of Councillors on November 4, 2016 which the Chairman of the Municipality by his letter dated November 28, 2016 communicated to the petitioner.

Heard learned advocate for the parties, perused the materials-on-record.

11. Section 218 (3) of the said Act provides for an appeal against the order for demolition or alteration of buildings made by the Board of Councillors under sub-section (1) thereof before the Court having jurisdiction, but no period of limitation has been prescribed for preferring such an appeal.

The said appeal was filed before the appellate jurisdiction of the Court below not original, therefore, the Court below has committed an error in holding that the said appeal was preferred in the original jurisdiction of a Civil Court and consequently fell in error in importing a period of limitation for preferring the said appeal by treating it as one under Order XLIII of the Code. The Hon'ble Supreme Court in the case reported **(2000) 5 Supreme Court Cases 299 (supra)**, relied on by Mr. Roy has clarified the position of law in this

regard, excerpts from paragraph 13 of the said report being relevant, are reproduced below for ready reference:-

“13. Any law or stipulation prescribing a period of limitation to do or not to do a thing after the expiry of period so stipulated has the consequence or creation and destruction of rights and, therefore, must be specifically enacted and prescribed therefor. It is not for the courts to import any specific period of limitation by implication, where there is really none...”

12. Notwithstanding the procedure prescribed under the Code to be followed in conducting the said appeal, the right of the said appeal emanates from the said Act, not from the Code, therefore, the Court below has committed a gross error of law in fixing a period of limitation for the said appeal equivalent to the period of limitation for an appeal from an order under Order XLIII of the Code.

13. In the absence of any specific period of limitation for preferring the said appeal, the applicability of The Limitation Act, 1963, by necessary implication, stands excluded, on this issue it would suffice to quote paragraph 4 of the decision of the Hon’ble Supreme Court reported in **(1997) 6 SCC 73 (supra)**:-

“4. Mr. Bhasme, learned counsel for the appellant, contends that in the absence of fixation of the rule of limitation, the power can be exercised within a reasonable time and in the absence of such prescription of limitation, the power to enforce the order is vitiated by error of law. He places reliance on the decisions in State of Gujrat v. Patil Raghav Natha, Ram Chand v. Union of India and Mohd. Kavi Mohamad Amin v. Fatmabai Ibrahim. We find no force in the contention. It is seen that the order of ejectment against the applicant has become final. Section 21 of the Mamlatdar’s Court Act does not prescribe any limitation within which the order needs to be executed. In the absence of any specific limitation provided thereunder, necessary implication is that the

genera law of limitation provided in the Limitation Act (Act 2 of 1963) stands excluded. The Division Bench, therefore, has rightly held that no limitation has been prescribed and it can be executed at any time, especially when the law of limitation for the purpose of this appeal is not there. Where there is statutory rule operating in the field, the implied power of exercise of the right within reasonable limitation does not arise. The cited decisions deal with that area and bear no relevance to the facts.”

14. The said Act is a special statute; no period of limitation has been prescribed to exercise the right of appeal under the said Act against an order of demolition passed by the Board of Councillors of a municipality. Therefore, in view of exclusion of The Limitation Act, 1963 in respect of such an appeal, investigation as to the reasonableness of the delay in preferring the said appeal is unnecessary, consequently the decision cited by Mr. Roy reported in **(2005) 7 Supreme Court Cases 667 (supra)** is of no relevance in deciding the issue under consideration.

15. The point sought to be canvassed by Mr. Gayen that the life of the building plan of the petitioner has already been expired is beyond the scope of the present revisional application, as such, this Court is not inclined to probe into it. The Limitation Act, 1963 since has no manner of applicability in preferring the said appeal, the decision cited by Mr. Gayen reported in **(2013) 12 Supreme Court Cases 649 (supra)** is misplaced. This Court is unable to accept the submission of Mr. Gayen that the communication of the Chairman of the Municipality regarding the order of demolition passed by the Board of Councillors is equivalent to the communication of the said order by the Board

itself, however the petitioner since had preferred the said appeal against the said communication of the Chairman, as per the liberty granted by the Hon'ble Division Bench, the said issue need not be stretched further.

Summing up the discussions made above, this Court is of the opinion that the Court below has acted with material irregularity in holding that the said appeal was filed beyond the prescribed period of limitation, as such the order impugned is set aside, in consequence thereof the said appeal being **Other Appeal No.01 of 2022** and the application for stay thereto are restored to their original file and number.

The revisional application being C.O. 310 of 2022 is allowed with the above terms without any order as to costs.

The Court below is requested to decide the said appeal on merit in accordance with law.

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(BISWAJIT BASU, J.)