

42 06.12.2022
rkd Ct.15

W.P.A. 4832 of 2013

Pradip Mandal

-vs-

The Chairman, Hooghly-Chinsurah Municipality & Ors.

Mr. Kajal Roy

....for the petitioner.

Mr. Tapas Kumar Ghosh,

Mr. Tanmoy Chowdhury

....for the Hooghly-Chinsurah Municipality.

The writ petition is directed against the order dated 28th January, 2013 issued by the Chairman, Hooghly-Chinsurah Municipality whereby petitioner has been asked to demolish the illegal structure alleged to have been erected in the premises without obtaining sanctioned plan and without having the land mutated.

The learned advocate representing the petitioner while making submission in support of the case made out in the writ petition has placed reliance on Section 218 of the West Bengal Municipal Act, 1993. The sum and substance of the contentions made on behalf of the petitioner is two-fold which are as follows:

- i) That the impugned order dated 28th January, 2013 is issued by the chairman of the concerned municipality

without affording opportunity of being heard to the petitioner as it has been contemplated under Section 218(1) of the West Bengal Municipal Act, 1993.

- ii) That the demolition order dated 28th January, 2013 has been issued by the Chairman of the Municipality but in terms of the provisions as contained in Section 218 such order need to be passed by the Board of Councillors.

Mr. Ghosh, learned advocate appears for the Hooghly-Chinsurah Municipality being the principal respondents and has submitted that a valid resolution was taken in the meeting of the Board of Councillors and in the resolution taken therein the Chairman of the Municipality was duly authorized to issue the order dated 28th January, 2013 asking the petitioner to demolish the construction which has been put up without any sanctioned plan. Therefore, according to the municipal authorities there is no illegality in issuing the order dated 28th January, 2013

directing the petitioner to demolish the illegal construction.

This Court has heard the learned advocates representing the parties and perused the relevant materials available on record including the impugned order of demolition dated 28th January, 2013. Without delving into the issue of necessity to pass demolition order by the Board of Councillors as it has been agitated on behalf of the petitioner it transpires that the impugned demolition order dated 28th January, 2013 was issued by the Chairman of the Municipality without affording opportunity of being heard to the petitioner.

Failure on the part of the municipality to extend the opportunity of being heard violates the prescription of law as contained in Section 218(1) of the West Bengal Municipal Act, 1993.

On consideration of Section 218(1), it appears to this Court that before issuing order of demolition there is a need to grant opportunity of hearing to the persons responsible.

In the above conspectus, the order of demolition dated 28th January, 2013 stands set aside.

However, this order shall not preclude the concerned authority of Hooghly-Chinsurah

Municipality to initiate demolition proceeding afresh in accordance with law.

If such proceeding is initiated within a period of thirty days from date the same shall be taken into logical conclusion within a period of twelve weeks thereafter.

However, it is made clear that if opportunity of hearing is granted to the petitioner he shall not take any unnecessary adjournment.

With the aforesaid direction, the writ petition stands disposed of.

However, there shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties on the usual undertakings.

(Saugata Bhattacharyya, J.)