

S/L 29
13.5.2022
Court. No. 19
sn

WPA 6957 of 2020

Smt. Mira Shaw
Vs.
Bhatpara Municipality & Ors.

Ms. Lakshmi Shaw ... for the Petitioner

Mr. Rameswar Sinha
Mr. Pritam Majumder ..for the Municipality

Mr. Dipak Kumar Mukherjee
Ms. Supriya Dey Barat
Ms. Shreyashi Bhaduri ..for the respdts.7-9

The petitioner urges the Court to permit demolition of the building situated at 23, West Ghosh Para Road, Post Office Kankinara, without referring the matter to the municipality.

The petitioner submits that the building has been in a dilapidated condition such long and requires immediate reconstruction upon demolition of the existing structure. The lives of the occupants are in danger. The building is occupied by some persons.

In 2013, the municipality found that the building was on the verge of collapse. A notice dated June 19, 2013 was issued by the Chairman of the municipality, calling upon the petitioner to demolish the structure within three days. Such notice was challenged by the writ petitioner by filing AST 126 of 2013. AST 126 of 2013 was disposed of by order dated July 4, 2013. A co-ordinate Bench of this Court,

recorded that as the building was in a dilapidated condition, the occupiers must vacate within three months from the date of the order, failing which, the municipality would be at liberty to evict the occupiers and effect the demolition.

The order of the learned co-ordinate bench is quoted below:-

“This Court thus permits the petitioner to shift the occupiers from the said building and demolish the said building within three months from date, in default, the Municipal authority will be free to evict the occupiers from the said building and will demolish the same on realisation of cost of such demolition from the petitioner.

Considering the report submitted by the Municipal authority, this Court is of the view that it is desirable that the occupiers of the said building should shift themselves from the said building immediately. In the event they decide to remain there, they may do so at their own risk.”

An appeal was carried from the order by the occupants and an order was passed on June 13, 2014 quashing the aforesaid notice of the Chairman on the technical ground that the notice should have been issued by the Board of Councillors and not the Chairman. The Municipality was granted liberty to proceed under Sections 222, 223 and 327 of the West Bengal Municipal Act, 1993. The factum of the damaged and dilapidated condition of the building, was accepted by the Division Bench.

The relevant portion of the order of the Division Bench is quoted below:-

“In the aforesaid circumstances, the notice dated 19th June, 2013 issued by the Chairman, Bhatpara Municipality under Section 327(1) & (2) of the West Bengal Municipal Act, 1993 cannot be sustained in the eye of law and the same is accordingly, quashed.

However, quashing of the aforesaid notice will not prevent the local municipal authorities from taking appropriate decision in respect of the structure in question strictly in accordance with law and specially under Sections 222, 223 and 327 of the West Bengal Municipal Act, 1993. With the aforesaid observations and directions, we set aside the impugned order under appeal passed by the learned Single Judge and dispose of both the application as well as the appeal upon treating the said appeal as on day’s list.

In the facts of the present case, there will be no order as to costs.”

The municipality did not proceed on the basis of the liberty granted.

The petitioner once again approached the Court by filing a writ petition being WP 14426(W) of 2018, seeking permission to undertake repairing work. The writ petition was disposed of by an order dated August 16, 2018, by another co-ordinate bench permitting the petitioner to complete the repair work without disturbing the possession of any of the occupants of the building and without causing any further damage to the building. Further liberty was granted to the petitioner to meet the Chairman in Council (PWD) of the municipality, to discuss the issue.

The relevant portion of the said order is quoted below:-

“Having heard the rival contentions of the parties, in my view, interest of justice would be sub-served by requiring the petitioner to meet

the Chairman in Council (P.W.D) of the Municipality as directed by the Municipality in its notice dated July 25, 2018. The petitioner is at liberty to disclose the nature and extent of the repair to be undertaken in such meeting. If the petitioner is permitted by the authorities to undertake any work of repair, he is at liberty to do so without disturbing the possession of any of the occupants of the building and without causing any further damage thereto. The occupants are at liberty to inform the petitioner of any damage caused during the course of the work. The petitioner will repair such damage at his own costs.

W.P. 14426 (W) of 2018 is disposed of without any order as to costs.”

The petitioner alleges that although she met the Chairman in Council(PWD), the grievance of the petitioner was not addressed and the petitioner was only allowed to repair her own building as a consequence of the order of the High Court. Neither any specification nor any extent or nature of the repair was intimated.

It is submitted that a specific prayer was made before the Chairman in Council(PWD) of the municipality to permit demolition of the damaged portion of the building, but the Chairman in Council did not pass any orders with regard to such prayer. Once again the petitioner filed a representation dated December 24, 2018. Since then, the petitioner has approached the municipality on several occasions seeking permission to demolish her own building on her own, so that the building could be reconstructed and made habitable.

It is the specific contention of the petitioner that the repair work did not restore the building. It is also the specific contention of the petitioner that day by day the condition of the building is getting worse and some portions have also collapsed in the meantime.

What is surprising the Court is that when the municipality itself had directed that the building must be demolished as it was not in a habitable condition and the Division Bench permitted the municipality to proceed in accordance with law, what compelling reasons prevented the authority from acting in accordance with the liberty granted by the Division Bench.

The latest report filed by the municipality in 2021, reflects that the municipality could not enter the building which was locked, but it was evident from outside that the building required massive renovation.

Mr. Majumdar learned Advocate for the municipality submits that the municipality is always willing to proceed with the matter as per the direction of the Division Bench, but the petitioner and the other occupants have resisted the inspection to be held for the purpose.

The Engineer's report prepared by one Avoy Krishna Sarkar at the instance of the petitioner also reflects that the rooftop was damaged and may collapse at any time.

When there is no controversy or contrary view with regard to the condition of the building, this Court cannot understand why the issue could not be resolved by the municipality with the co-operation of the petitioner and the occupants pursuant to the order of the Division Bench.

Under such circumstances, this writ petition is disposed of with a direction upon the municipality to proceed in accordance with law in terms of Sections 222, 223 and 327 of the West Bengal Municipal Act, 1993. The relevant law is quoted below:-

“222. Maintenance of buildings. - (1) The Board of Councilors may, for sufficient reasons, by an order require the owner or the occupier of any building abutting on a public or private street to keep the external parts of the building, including the roof thereof, in proper repair with lime plaster or other material or properly painted to the satisfaction of the Board of Councilors.

(2) If such owner or occupier makes persistent default in carrying out an order made in this behalf, the Board of Councilors may itself carry out the work and recover the cost thereof from the owner or the occupier of the building, as the case may be.

(3) Notwithstanding anything contained in any other law for the time being in force, the Board of Councilors may apportion the costs incurred under sub-section (1) or sub-section (2) between the owner and the occupier in such manner as it may consider just and reasonable.

(4) The Board of Councilors may create and administer a special fund for maintenance as well as improvement of buildings in any area on corporate basis in accordance with such procedure as may be prescribed.

223. Power to order demolition of buildings, dangerous, ruinous or unfit for human habitation. - (1) Where the Board of Councilors, upon any information in its possession, is satisfied that any building is

unfit for human habitation and is not capable, at a reasonable expense, of being rendered fit,

it shall serve upon the owner of the building and upon any other person having an interest in the building, whether as lessee, mortgagee or otherwise, a notice to show cause within such time as may be specified in the notice as to why an order of demolition of the building should not be made.

(2) If any of the persons upon whom a notice has been served under sub-section (1) appears, in pursuance thereof, before the Board of Councilors and gives an undertaking that such person shall, within a period specified by the Board of Councilors, execute such work of improvement in relation to the building as will, in the opinion of the Board of Councilors, render the building fit for human habitation or that the building shall not be used for human habitation until the Board of Councilors, on being satisfied that it has been rendered fit for human habitation, cancels the undertaking, the Board of Councilors shall not make an order of demolition of the building.

(3) If no such undertaking as is referred to in sub-section (2) is given or if, in a case where any such undertaking has been given, any work of improvement to which the undertaking relates is not carried out within the specified period or the building is used in contravention of the terms of the undertaking, the Board of Councilors shall forthwith make an order of demolition of the building requiring that the building shall be vacated within such period, not being less than sixty days from the date of the order, as may be specified in the order, and demolished within ninety days after the expiration of that period.

(4) Where an order of demolition of a building under this section has been made, the owner of the building or any other person having an interest therein shall demolish the building within the period specified in the order, and if the building is not demolished within such period, the Board of Councilors shall demolish the building and sell the materials thereof.

(5) Any expenses incurred by the Board of Councilors under sub-section (4), which cannot be met out of the proceeds of sale of

materials of the building, shall be recovered from the owner of the building or any other person having an interest therein as an arrear of tax under this Act.

(6) In determining, for the purposes of this section, whether a building is unfit for human habitation, regard shall be had to its condition in respect of the following matters, that is to say,-

- (a) repair;
- (b) stability;
- (c) freedom from damp;
- (d) natural light and air;
- (e) water supply;
- (f) drainage and sanitary conveniences;
- (g) facilities for storage, preparation and cooking of food and for the disposal of rubbish, filth and other polluted matter;

and the building shall be deemed to be unfit as aforesaid if it is so defective in one or more of the matters as aforesaid that it is not reasonably suitable for occupation in that condition

(7) For the purposes of this section, "work of improvement" in relation to a building shall include any one or more of the following works, namely-

- (a) necessary repairs;
- (b) structural alterations;
- (c) provision of light points and water taps;
- (d) construction of drains, open or covered;
- (e) provision of latrines and urinals;
- (f) provision of additional or improved fixtures and fittings;
- (g) opening up or paving of courtyard;
- (h) removal of rubbish, filth and other polluted and obnoxious matter;
- (i) any other work, including the demolition of any building or any part thereof, which, in the opinion of the Board of Councilors, is necessary for executing any of the works specified in clauses (a) to (h).

327. Precautions in case of dangerous structures. - (1) If any structure is deemed by the Board of Councilors to be in ruinous state and dangerous to the passers-by or to

the occupiers of neighbouring structures, the Board of Councilors may by notice require the owner or the occupier to fence off, take down, secure or repair such structure to prevent any danger therefrom within such period as may be specified in the notice.

(2) If immediate action is necessary, the Board of Councilors shall, before giving such notice or before the period specified in the notice expires, fence off, take down, secure or repair such structure or fence off a part of any street or take such temporary measures as it may think fit to prevent danger, and the cost of doing so shall be recoverable from the owner or the occupier as an arrear of tax under this Act.

(3) If, in the opinion of the Chairman-in-Council, the structure as aforesaid is imminently dangerous to the inmates thereof, it shall order immediate evacuation thereof, and any person disobeying the order may be removed by any police-officer.”

As it is submitted by the petitioner that the building is in a dilapidated condition and needs immediate demolition, the proceeding shall be initiated and concluded by the municipality within a period of four weeks from the date of communication of this order.

The prayer of the petitioner to grant permission to effect demolition on her own cannot be allowed by this court as the statute has prescribed a procedure in this regard, as quoted hereinabove. The writ court cannot pass any order which is not permitted by law. A court cannot circumvent the law. Moreover the Division Bench had already permitted the municipality to proceed in accordance with law and the said order has attained finality. Any order by this court, would

amount to modification of the order of the Division Bench.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

All the parties are directed to act on the basis of server copy of this order and/or the learned advocate's communication.

(Shampa Sarkar, J.)