

December 12, 2023
Sl. No.13
Court No.19
s.biswas/srm

CO 1 of 2023

Anima Guha @ Chatterjee

vs.

The Board of Councilors of Katwa Municipality & Anr.

Mr. Rajdeep Bhattacharya

Mr. Debapratim Guha

Mr. Diptendu Banerjee

... for the petitioner

Mr. Tapas Kumar Bhattacharya,

Mr. Aviroop Bhattacharya

... for the opposite party no.1

Mr. Uttiya Ray

Mr. Arnab Mandal

.. for the opposite party no.2

The revisional application has been filed challenging an order dated December 5, 2022 passed by the learned Civil Judge (Junior Division), 1st Court, Katwa in Misc. Appeal No.01 of 2022. The miscellaneous appeal arises out of an order of demolition. The petitioner is the person responsible for the unauthorized construction. The Misc. Appeal No.01 of 2021 was filed challenging an order of demolition passed by the Chairperson, Board of Administration, Katwa Municipality dated February 18, 2021.

In compliance with the order of this court, passed in WP 3223 (W) of 2019, the Katwa municipality invoked the provision of Section 218 of the West Bengal Municipal Act, 1993 (hereinafter referred to as 'the said Act'), in respect of the illegal construction made by the petitioner. The petitioner is a resident of Katwa, Khepa Kalipara. The Sub-

Assistant Engineer, Katwa Municipality was directed to take up the work of demolition of the illegal construction on the first floor of Holding No.57, with the assistance of the police, lady police, Sanitary-in-Charge and the Engineering Department.

Mr. Bhattacharya, learned advocate for the petitioner, submits that the order impugned suffers from the following irregularities:

- a) The learned court did not take into consideration that the prayer for regularization should have been decided on the facts of the case.
- b) Mere repair and construction of bath and privy should not be treated as unauthorized construction as they could be retained upon payment of fine.
- c) The learned court failed to appreciate that there was a specific order of the Division Bench of this court to consider the aspect of retention of such construction.
- d) The Katwa Municipality did not pass a reasoned order, explaining why the construction was unauthorized.
- e) The Board of Directors did not have any power to direct demolition.

Mr. Roy, learned advocate appearing on behalf of the opposite party no.2, that is, the person who complained of such alleged illegal construction, submits that the Board of Administrators issued the second order, for implementation of an earlier order of demolition, which was passed in consonance with the principles of law and upon hearing the parties. Such order of demolition was passed by invoking Section 218 of the said Act, pursuant to a direction of this court in a writ petition filed by the opposite party no.2. The municipal authorities had filed the report in the form of affidavit in the said writ proceeding before this court. A learned Single Judge of this court, upon perusal of the affidavit, held that when there were findings of unauthorized construction, the municipal authorities should continue to discharge their duties as enjoined by the law and take necessary steps. On the direction of this court, the parties were heard and an order of demolition was passed. The authorities failed to implement such order of demolition as the opposite party no.2 once again filed another writ petition. In the writ petition, being WP 3223 (W) of 2019, a learned Co-ordinate Bench of this court directed the municipal authorities to invoke Section 218 of the said Act, against the illegal construction made by the petitioner. On the basis of such direction, the

subsequent order of the Chairperson, Board of Administrators, Katwa Municipality was passed.

Mr. Tapas Kumar Bhattacharya, learned advocate for the Municipality submits that from the very beginning, the unauthorized construction had been detected. The construction was not a minor deviation. The authority should not exercise discretion, by allowing either retention or regularization. Substantial construction had been done, without permission from the authorities. It is further submitted that the learned court below had taken into consideration all the aspects as also the law applicable and passed the order with elaborate reasons.

Considering the contentions of the parties, this court finds that there is no dispute with certain admitted facts.

- a) A complaint was received by the municipality with regard to the unauthorized construction of the petitioner
- b) The matter came up before this court in a writ petition being WP 13160 (W) of 2017.
- c) Such writ petition was disposed of by the learned Single Judge on July 16, 2018, inter alia, holding that the report in the form of affidavit as called for by the court, indicated that the municipality had found

unauthorized construction. Thus, the municipality was directed to invoke the provisions of Section 218 of the Act, within a period of fortnight and to make an endeavour to dispose of the same within a period of eight weeks thereafter.

- d) The nature and the extent of unauthorized construction was kept open by the municipality to decide.
- e) There is a clear finding that the report of the municipality 'spoke of unauthorized construction'.
- f) Basing on such report, a notice was issued in favour of the petitioner to appear before the municipality on July 16, 2018 and to show cause as to why the alleged construction will not be demolished under Section 218 of the said Act. After conclusion of the hearing, a demolition order was passed with regard to the second storey on the property in question, on August 20, 2018.
- g) The order was challenged in WP 18471 (W) of 2018 and the learned Single Judge disposed of the matter on September 28, 2018 with liberty to the petitioner to take recourse to

the provisions of Section 218(3) of the said Act within a period of seven days.

- h) The petitioner failed to avail of the opportunity of filing an appeal against the order of demolition dated August 20, 2018.
- i) As the municipal authorities failed to take steps for demolition of the said construction, the opposite party no.2 filed WP 3223 (W) of 2019. Such writ petition came up before this court and the application was disposed of by another learned Single Judge, directing the municipality to issue notice upon the petitioner and take steps to demolish the construction within a period of two weeks. The relevant portion of such judgment of this court of the learned Single Judge is quoted below:

“In the said conspectus, this order directs the municipal authorities to immediately issue a notice to the private respondent no.4 and 5 asking them to demolish the unauthorised construction within two weeks.

In the event the private respondents fail to comply with such notice, the municipal authorities shall take expeditious steps to implement the order of demolition dated 20th August, 2018, in accordance with law within a period of two weeks thereafter.

With the above observations and directions, this writ application is disposed of.”

- j) Accordingly, the order was passed by the Chairperson, Board of Administrators, Katwa Municipality dated February 18, 2021, by which demolition of the unauthorised construction was directed.
- k) The order was challenged in a writ petition being W.P. No.3223 (W) of 2019 and an interim stay was granted with liberty to the petitioner to prefer an appeal.
- l) Challenging such order of stay, the opposite party No.2 preferred an appeal being MAT 320 of 2021. The said appeal was disposed of by directing the appellate authority to dispose of the appeal within eight weeks and the parties were directed to cooperate and not seek unnecessary adjournments. The order impugned was passed thereafter.

Coming to the reasonings given by the learned court below, the fact of unauthorised construction is established. The learned court analysed the law and came to the finding that in the absence of the Board of Councillors, the Board of Administrators could discharge its function. That the nature of construction required a sanction. That the petitioner could not produce any paper to establish that only repair works were undertaken and no construction had been made. On the contrary, the municipal authorities had urged

before the learned court that there was construction on the first floor which was totally unauthorised and which was not in the nature of repair.

The factual aspects have been elaborately discussed by the learned court and this Court under Article 227 of the Constitution of India, cannot sit as a court of appeal to analyse and re-appreciate evidence.

The learned court also applied the law available and there does not appear either any error of jurisdiction or error apparent on the face of record. It further appears that the learned court below considered the different judgments of the Hon'ble Apex Court with regard to regularisation and was of the definite finding that regularisation, in the absence of any rule was not permissible and the court of law could not direct the authority to perform such act, which would be in violation of law.

Under such circumstances, the order impugned does not call for any interference.

Accordingly, the revisional application is dismissed.

The municipality will act and perform its duties, in accordance with law.

There shall be no order as to costs.

Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)