

14.06.2023
Sl. No.7(DL)
srm

C.O. No. 615 of 2023

Nidhiram Roy

Versus

The Chairman, North Dum Dum Municipality & Ors.

Mr. Biswarup Bhattacharya,
Mr. Soumyajit Bhatta,
Mr. Atis Kumar Biswas

...for the Petitioner.

Mr. Debayan Ghosh

...for the Opposite Party Nos.1 & 2.

Mr. Debdatta Saha,
Mr. N.N. Mookerjee,
Mr. Abhishek Banerjee

...for the Opposite Party Nos.3 & 4.

Despite service, none appears on behalf of municipality.

The revisional application has been filed challenging an order passed by the learned Civil Judge (Junior Division), Bidhannagar in Municipal Appeal No.01 of 2018. The miscellaneous appeal was preferred by the petitioner challenging an order of demolition dated September 29, 2018.

Initially, an order of demolition was passed against the petitioner, by the Chairman of the North Dum Dum Municipality dated April 2, 2018 by which the petitioner was asked to remove the boundary wall from a common passage.

The said order was challenged before this Court by filing a writ petition being W.P. No.16937 (W) of 2018. The said writ petition was disposed of by an order dated September 5, 2018 by a learned coordinate Bench. The learned coordinate Bench held that the order of the Chairman was without jurisdiction and the provisions of Section 218 of the West Bengal Municipal Act, 1993 (hereinafter referred to as the said Act) had not been followed before such order of demolition had been passed. It was further noted that the law permitted construction of a boundary wall up to a certain height and permission for such construction upto allowable limit was not required. However, as there was a question of unauthorised construction, the learned Judge directed the municipal authorities to proceed under Section 218 of the West Bengal Municipal Act, 1993 by setting aside the order of demolition.

Upon initiating proceeding under Section 218 of the said Act, the order of demolition was passed and the Chairman of the municipality communicated the decision of the competent authority to the petitioner and others. It was found that as the construction of the petitioner at Khudiram Sarani, Ward No.30, was without any approved plan the said unauthorised building should be demolished.

The order of demolition was challenged by filing a municipal appeal.

The learned court below found that there was no error or procedural irregularity on the part of the municipality in passing the order of demolition. The minutes book was produced before the learned court below which recorded the factum of unauthorised construction of a boundary wall. The order of demolition was upheld.

The learned Advocate for the petitioner has challenged the order impugned on the following grounds:

- (a) When the demolition order was passed in respect of an unauthorised building which was allegedly constructed without any plan as per the authority, the learned court below could not have directed the boundary wall to be demolished. Such boundary wall was not the subject matter of the order of demolition.
- (b) The learned court failed to take into consideration that the order of demolition was bad in law as the same suffered from factual irregularities and was beyond the scope of the objection raised by the complainants.

(c) That the common passage was not a municipal road but a private one and hence the municipal authorities did not have any jurisdiction to decide whether the boundary wall had encroached upon the common passage or not.

(d) The right of user by the complainant in respect of the said passage, was to be decided by a civil court.

The learned Advocate also submits that a civil suit is pending with regard to the user of the common passage and such user should be restricted to the persons who had purchased the property from the 'Kar family'. The passage had been delineated for use of those persons alone.

The learned Advocate for the opposite party Nos.3 and 4 submits that the learned court below has clarified that the dispute was over a boundary wall and even if the order of demolition mentions a building on the alleged lane, the said order of demolition has been rectified by the learned civil court and no further interference of this Court is necessary. Learned Advocate further submits that the common passage was in the nature of a by-lane maintained by the municipality and was not used as a private common passage only by the purchasers of the property from the 'Kar family'. Learned Advocate submits that mistakes in the order of demolition

have been rectified by a further order passed in the appeal. Hence this revisional application should be dismissed.

The learned Advocate for the municipality submits that the dispute with regard to the common passage is civil in nature. However, the municipal authorities have the right to proceed against any unauthorised construction.

Heard the learned Advocates for the respective parties. It is an admitted position that an objection was filed with regard to the re-construction of a boundary wall by the petitioner. Initially, the municipal authorities directed demolition of the boundary wall. The said order was challenged before this Court. This Court directed that the procedure in terms of Section 218 of the West Bengal Municipal Act, 1993 should be adopted and the Chairman did not have any independent jurisdiction to pass the order of demolition. His Lordship also observed that the construction of a boundary wall up to certain a height, would not require the permission from the municipality.

On the basis of the order passed by this Court, a further proceeding was initiated and the demolition order was passed directing the petitioner and others to demolish an unauthorised construction of a building without any plan.

For convenience, the order of demolition is quoted below:

“The matter placed with Board of Councillor’s meeting along with inspection report submitted from the concerned department for the case of unauthorised construction made by Sri Nidhiram Roy and others station road bylane (Khudiram Sarani) ward no.30 without any further approve plan.

The members heard the presentation by the P.W. Department examined all relevant paper documents and finally reached to the conclusion unanimously that Nidhi Ram Roy and others will demolish the aforesaid unauthorised construction of the building within a period of 15 (fifteen) days from the date of receiving the order by the Board of Councillor’s 29.09.218 at this own cost and risk. However he fails to comply the order of the Municipality, the Municipality will arrange the same and demolishing charge will have to bear by Nidhi Ram Roy and others without any further notice to him.”

Such order was challenged by the petitioner on various grounds by filing Municipal Appeal No.01 of 2018. The learned civil court found that the authorities had proceeded in accordance with law and passed the order in compliance with the principles of natural justice. Hence, the order of demolition was upheld, with an observation that the records revealed that there was an existence of an unauthorised boundary wall. This finding, in my view, ought to have prevailed upon the learned Judge to remand the matter back to the municipally for a proper adjudication because of the factual errors which were apparent in the order of demolition. The learned court also did

not ascertain whether the boundary was permissible under the municipal law or whether the nature and height of the boundary wall was such that permission from the municipal authorities would not be required. Further, if it is the case of the parties opposing such reconstruction of the boundary wall that the wall had encroached on a municipal road, the said objection ought to have been decided both by the municipal authorities and also by the learned civil court as a separate issue.

Under such circumstances, a mere observation of the learned court below with regard to the existence of an unauthorised boundary wall in the minutes book which did not find any mention in the order of demolition is perverse and hence the order impugned passed in Municipal Appeal No.01 of 2018 as also the order of demolition dated September 29, 2018 are set aside and cancelled.

The municipal authorities will re-do the entire exercise on the basis of the objection raised with regard to the alleged re-construction of the boundary wall by the petitioner.

While doing so, the following issues shall be decided:

- (a) Whether the boundary wall which had been reconstructed by the petitioner was within the allowable limit or the height of the wall was such

that the permission as per the Building Rules and the Act was required from the municipality.

(b) Whether the boundary wall was on a municipal road or a public road or a common road used by the public.

(c) Whether the said passage had been kept aside for use of those persons who had purchased the entire land from the 'Kar family'.

(d) Description of the road in the map maintained by the municipality or in the land records.

The issues to be decided by the municipality on the basis of this order shall be restricted to the instant proceedings.

Prior to any decision, an inspection shall be held in the presence of the parties by the municipal authorities. A report shall be prepared and handed over to the parties. The parties must also be allowed to furnish their written objection/rejoinders to the said report and adduce oral and documentary evidence in support of their contentions. Thereafter, upon hearing the parties, a reasoned order will be passed and reached to its logical conclusion.

If the height of the wall is found to be beyond the allowable limit and had been constructed without permission, steps shall be taken for demolition in accordance with law. If

the encroachment is found on a municipal road or a PWD road steps shall be taken for removal of the encroachment. A civil dispute with regard to encroachment on a private passage and not a municipal road or a PWD road must be decided in the suit.

The entire exercise shall be completed within a period of three months from the date of communication of this order.

The revisional application is, thus, disposed of.

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.)