

Item No.4

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

05.04.2023
Ct-24

WPA 6091 of 2023
Shri Prabir Kumar Bhadra & Ors.
v.
Bhatpara Municipality & Ors.
with
CAN 1 of 2023

Mr. Arunava Ghosh
Mr. Puspall Chakraborty
Ms. Srijita Nath
... for the petitioners.

Dr. Madhusudan Saha Ray
... for the respondent no. 6.

Mr. Dibyendu Chatterjee
Mr. Pritam Majumdar
Mr. Soumish Ghosh
... for the Municipality.

The notice under Section 218(5) dated February 23, 2023 signed by the Chairperson, Bhatpara Municipality is impugned in the present writ petition.

It appears that the said notice was issued allegedly in compliance of the direction passed by the Court in WPA 14355 of 2021 (Pritam Sarkar v. The State of West Bengal & Ors.).

The specific contention of the petitioners is that the order of demolition was passed without affording proper opportunity of hearing to the petitioners.

On February 7, 2023 a hearing was conducted, but no notice of the said hearing was given to the petitioners.

The petitioners further submit that the provision of Section 218(5) of the West Bengal Municipal Act, 1993(Amended) ought not to have been invoked.

At the time of hearing of the writ petition the learned advocate representing the Bhatpara Municipality has produced documents to show that efforts were taken for service of the notice of hearing scheduled on February 7, 2023 upon the petitioners but the same remained unserved.

It has been submitted that initially the said notice stood refused on January 30, 2023 and thereafter the same was sent through speed post but the envelope returned unserved with the postal endorsement "Door Locked." It has been submitted that the petitioners deliberately avoided acceptance of the said notice of hearing.

With regard to invocation of Section 218(5) it has been submitted that as the Board of Councillors did not meet for a hearing within the time stipulated by the Court and the Municipality was obliged to comply the order passed by the Court, accordingly, the Chairman-in-Council invoked the emergency provision under Section 218(5) of the Act.

Learned advocate representing the private respondent submits that the inspection report clearly indicates that there are several deviations which are liable to be demolished.

It appears from the submissions made on behalf of all the parties that for some reason the petitioners could not be present at the time of hearing held on February 7, 2023. The petitioners admit that they were present in the hearing held on January 20, 2023.

Not giving proper opportunity to the petitioners to defend the demolition proceeding will amount to violation of principles of natural justice.

As regards invocation of Section 218(5) it does not appear that this is a case where immediate action is required to be undertaken. The construction in question is over and spot inspection has already held and deviations have been recorded. It is for the Board of Councillors to act in accordance with Section 218(1) & (2) of the Act for passing any order of demolition.

In view of the above, the impugned notice under Section 218(5) of the Act dated February 23, 2023 is set aside and quashed.

The Board of Councillors, Bhatpara Municipality is directed to grant reasonable opportunity of hearing to all the necessary parties and conclude the proceeding at the earliest but positively within a period of eight weeks from the date of communication of a copy of this order.

By consent of all the parties and to avoid any further complication with regard to non-service of the notice of hearing, at the suggestion of all the parties the Court fixes April 20, 2023 at 2 p.m. as the date and time for hearing of the matter by the Board of Councillors of the Municipality. The parties will be at liberty to produce all documents before the Board of Councillors in support of their stand.

CAN 1 of 2023

In furtherance to the notice dated February 23, 2023 a communication has been made by the Chairperson of the Municipality on March 24, 2023 to

the Inspector-in-Charge, Jagaddal Police Station to provide police assistance to assist the municipal officers and the workmen of the Municipality on April 5, 2023 for demolishing the deviated and the illegal portion of the subject structure.

As the notice under Section 218(5) of the Act has already been set aside by the Court, accordingly, any steps taken consequent to the said notice is bad in law and liable to be set aside. The communication dated March 24, 2023 is also set aside.

The writ petition and the connected application stand disposed of.

Affidavit-of-service filed in Court today be kept on record.

The documents produced by the Bhatpara Municipality be retained with the records.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

Sh

(Amrita Sinha, J.)