

W.P.A. 8226 of 2015

**Radhesham Das
Vs.
The State of West Bengal & Ors.**

Mr. P. Ghosh

....for the petitioner

Mr. Prasad Bhattacharyya

...for the private respondent

Ms. Mousumi Bhowal

...for the Dum Dum Municipality

Affidavit-of-service filed on behalf of the petitioner
is taken on record.

Petitioner has approached this Court, *inter alia*,
praying for implementation of the order dated 15th July,
2014 issued by the Chairman, Dum Dum Municipality
whereby respondent no. 5 was directed to demolish
unauthorized construction alleged to have made by the
said respondent at premised no. 139 Manikpur
Nabapally, Kolkata-700079.

After hearing the learned advocate representing the
petitioner it appears that certain steps were taken by the
concerned authority of Dum Dum Municipality pursuant
to the order passed by a coordinate Bench on 4th
September, 2013 on the writ petition being WPA 18794 of
2013. The said writ petition was also filed by the present
petitioner ventilating grievance relating to erection of
unauthorized construction by the respondent no. 5. The

coordinate Bench while disposing the said writ petition on 4th September, 2013 directed the Municipality to inspect the area where alleged unauthorized construction has been made by the respondent no. 5 and on initiation of proceedings under Section 218 of the West Bengal Municipal Act, 1993 and upon granting opportunity of hearing to the parties directed the concerned authority of the said Municipality to pass final order dealing with such alleged unauthorized construction.

This Court has heard the learned advocates representing the petitioner, respondent no. 5 and Dum Dum Municipality.

On perusal of the order dated 15th July, 2014 passed by the Chairman, Dum Dum Municipality it does not appear that any formal proceeding was initiated under Section 218 of the West Bengal Municipal Act as directed by the coordinate Bench vide order dated 4th September, 2013.

In addition thereto it has also been pointed out by the learned advocate representing the respondent no. 5 that decision was taken in the meeting of the Chairman in Council on 24th March, 2014 whereas the notice was served upon the said respondent no. 5 dated 24th April, 2014 asking the respondent no. 5 to appear before the Board of Councillors on 13th May, 2014 which goes to show that after the decision was taken in the meeting of the Chairman-in-Council on 24th March 2014 the

respondent no. 5 was asked to make deliberations on 13th May, 2014. Such steps taken by the Municipality appears to be not in conformity with the order passed by the coordinate Bench on 4th September, 2013 and also defies the principle of natural justice so far respondent no. 5 is concerned.

In view of the order passed by the coordinate Bench on 4th September, 2013 as well as the procedure as contemplated under Section 218 the concerned authority of the Municipality is required to initiate formal proceeding under Section 218 upon granting opportunity to make deliberations to the parties which has not been done in the present case.

Accordingly, the memo dated 15th July, 2014 being annexure P5 to this writ petition stands set aside. The concerned authority of Dum Dum Municipality is directed to initiate proceeding under Section 218 afresh and bring the same into logical conclusion after granting opportunity of hearing to the petitioner as well as respondent no. 5. The proceedings shall be concluded within a period of 12 (twelve) weeks from the date of communication of this order.

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

There shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)