

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:
Hon'ble Justice Shampa Sarkar

C.O. 1964 of 2022

Kali Prasad Shaw.

Vs.

The Board of Councillors of Baranagar Municipality & Anr.

For the petitioner : Mr. Aniruddha Chatterjee,
Mr. Debabrata Ray

For the opposite party No. 2 : Mr. Jahar Chakraborty,
Ms. Mitali Bhattacharya

Hearing concluded on: 28.07.2023

Judgment on: 17.08.2023

Shampa Sarkar, J.:-

1. This revisional application has been filed challenging the order dated June 30, 2022 passed by the learned Civil Judge (Junior Division), Bidhannagar in Municipal Appeal No. 2 of 2018.

2. The petitioner had suffered an order of demolition, in a proceeding initiated by the Baranagar Municipality. By the order impugned dated June 30, 2022, the learned Civil Judge (Junior division) Bidhannagar upheld the order of the demolition dated June 11, 2018, passed by the Municipality and directed implementation of the same, within 30 days from the date of the order.

3. The revisional application assails the order of the learned court below on the following grounds :-

(a) The order of demolition was without jurisdiction. The Chairman of the municipality was not empowered under the law to initiate proceedings and pass the order. Such aspect was not considered by the learned court.

(b) Only the Board of Councillors could adjudicate the issue of unauthorized construction and pass necessary orders, which was not taken note of by the learned court.

(c) The application for filing additional evidence was rejected without application of mind.

(d) The petitioner was not given adequate opportunity to represent the case before the municipality. Violation of the principles of natural justice was a good ground for setting aside the demolition order.

(e) The municipal authorities failed to consider the building sanction plan dated November 3, 2010.

(f) The genuineness of the report of the Assistant Engineer of the municipality, ought to have been adjudicated upon.

(g) The order of demolition was vague and unimplementable as the measurements and the location of the unauthorized construction had not be specifically delineated.

(h) The dispute with regard to the construction on the northern side, could not be raised by the opposite party No.2 as the said opposite party No.2 was not the adjacent owner of the property on its northern side.

(i) The order of demolition was passed without proper inspection and the municipality had arbitrarily directed demolition on the basis of surmise and conjecture.

4. Mr. Chatterjee, learned advocate appearing on behalf of the petitioner submits that the order of demolition deserved to be set aside on the ground of lack of jurisdiction, vagueness and denial of adequate opportunity of hearing to the petitioner.

5. Reliance was placed on the decision of the Division Bench of this court in the matter of **Avijit Kower & Others vs Subir Konar @ Subir Kower & Others** decided in **MAT No.- 567 of 2023**. According to Mr. Chatterjee, the said decision applied in the facts of the present case as the order of demolition was passed by the Chairman. The Chairman did not have any authority to issue a demolition order under Section 218 of the West Bengal Municipal Act, 1993, (hereinafter referred to as said Act). Only the Board of Councillors of the Municipality could initiate a proceeding for demolition against the petitioner and pass an order.

6. Further reliance was placed by Mr. Chatterjee on the decision of this Court in **Madan Mohan Pal & Anr. Vs State of West Bengal & Ors.** reported in **2006 SCC Online Cal 377**. It was held that Section 218(1) of the said Act authorized the Board of Councillors to pass an order of demolition and only the Board of Councillors, upon giving a reasonable opportunity of hearing to the owner of the building and upon being satisfied that the erection of the building was in contravention with the provisions of the law, could direct demolition of the building. The Chairman alone, could not pass any order. Reliance was also placed on the decision of **Priya Brata**

Maity vs State Of West Bengal reported in ***AIR 1999 Cal 32***. A Division Bench had held that the Chairman could not pass a demolition order of any construction, even if the construction was illegal.

7. It was further urged that the order of demolition was not sustainable in law as the municipal authorities had themselves regularized a portion of the construction, Hence, there was no cogent reason why the unauthorized portion of 2 feet and 6 inches of the roof slab, on the north eastern side of the premises, could not be regularized as well. The municipal authorities were empowered to regularize such construction.

8. Mr. Chakraborty, learned advocate appearing on behalf of the complainant, at whose instance the demolition proceeding had been initiated, submits that the revisional application suffered from gross suppression of facts. It was submitted that his client, the opposite party No.2 moved an application before this Court under Article 226 of the Constitution of India being WP 29469(W) of 2014 alleging inaction on the part of Baranagar Municipality in taking steps to prevent construction of an unauthorized building at premises No. 302/1/B, Gopal Lal Thakur Road, Kolkata – 700036.

9. By an order dated January 20, 2015, a single bench directed the municipal authorities to file a report. The municipal authorities filed a report prepared by the Assistant Engineer, Baranagar Municipality. Thereafter, the matter was listed before another learned single judge and by order dated December 11, 2015 the learned Judge disposed of the writ petition, *interalia*, holding that as the Baranagar Municipality had already initiated a demolition proceeding against the petitioner in terms of Section of 218 of the

said Act, the proceeding should be reached to its logical conclusion in accordance with law.

10. As no effective steps were taken for demolition, the opposite party No.2 filed an application for contempt. It was contented that although the Board of Councillors, by a resolution dated June 11, 2018, decided that the petitioner must be directed to demolish the unauthorized portion of the construction in the northern side of the property within 30 days, such resolution had not been acted upon. The resolution was communicated to the parties. The petitioner had not complied with such direction. The municipal authorities did not take further action to implement the order of demolition. The authorities were guilty of contempt.

11. The contempt application was registered as CPAN 1040 of 2016. Rule of contempt was issued and WPCRC 82(W) of 2018 was registered. The learned court, while disposing of the application came to a specific finding that the Chairman of Municipality was guilty of contempt. However, on account of apology tendered, the learned court disposed of the said contempt application granting an opportunity to the municipality to implement the order of demolition. Thereafter, an appeal was filed by the petitioner, under Section 218(3) of the said Act, before the learned Civil Judge (Junior Division) at Bidhannagar. The appeal was heard and disposed of by the order impugned.

12. Mr. Chakraborty, relied on the decision of ***Dipak Kumar Mukherjee vs Kolkata Municipal Corporation and Ors.*** reported in **(2013) 5 SCC 336** and submitted that constructions made in violation of the sanction plan could not be regularized by the authority. It was imperative that the

authority should not only demolish the unauthorized construction, but also impose penalty upon the person responsible for the unauthorized construction.

13. Having heard learned counsel for the respective parties, this Court holds as follows: -

- (i) The decision of the municipal authorities was not contrary to the provisions of law.
- (ii) The order of demolition was passed by the Board of Councillors of the Baranagar Municipality. The order of demolition which is at page 17 of the revisional application is the extract copy of the resolution of the Board dated June 11, 2018. Vide item no.6, the Board of Councillors on June 11, 2018 had decided the issue relating to the unauthorized construction raised by the petitioner in terms of the direction of this Hon'ble Court and had passed an order in the form of a resolution. It appears from the order itself, that both parties were informed about the date and time of hearing, i.e., June 11, 2018 at 5PM.
- (iii) The records reveal that the petitioner was all along apprised of the facts that there was a complaint with regard to his construction. A writ petition was moved and an order was passed on the first day wherein the factum of unauthorized construction as per the version of municipality, had been recorded by a learned Judge. The relevant portion of the order passed in WP No. 29469 W of 2014 is quoted below:

“On behalf of the municipality, it is submitted that there are six types of deviations so far as the construction of the respondent no. 5 is concerned. Let a report be filed by the

executive engineer of Baranagar Municipality before this Court disclosing the nature of such deviation. On behalf of the respondent no. 5 however, it is submitted that he is making construction as per sanctioned plan.”

- (iv) A meeting was also held earlier on September 11, 2017 by the municipality, when the petitioner submitted a letter along with photocopies of all documents in support of his claim. In terms of the order dated December 11, 2015 passed by a Single Judge of this Court, the proceeding was initiated. The Assistant Engineer also submitted a report which included consent letters from adjoining owners of adjacent lands on the eastern, western and southern side. The report indicated that agreements were executed to the effect that those adjacent owners were willing to forgo their objection with regard to relaxation of the minimum space requirement rule.
- (v) The Board of Councillors, considered the matter and found that Kali Prasad Shaw had constructed the building in deviation of the plan, particularly on the northern side. He had extended the roof slab by 2 feet 6 inches throughout the building. The owners of the other three sides of the building had given consent for attachment and relaxation of the statutory space. Thus, the extension of the roof slab by 2 feet 6 inches on the other three sides were condoned as the immediate adjacent owners had consented to grant such relaxation. The unauthorized construction on the northern side of the building at 302/1/B Gopal Lal Thakur Road i.e., extension of the roof slab in the northern side of the premises to the extent of 2 feet by 6 inches was directed to be demolished. The concerned engineer was directed to

take necessary steps as per the order of the Board of Councillors. Such decision of the Board of Councillors was informed to the parties by the Chairman of the Board of Councillors of Baranagar Municipality.

(vi) The first contention of Mr. Chatterjee that the Board of councillors did not pass the order of demolition, but the chairman usurped the power and function of Board of councillors, is incorrect. The Chairman, of the Municipality, on behalf of Board of Councillors of Municipality, had communicated the order of demolition. Such order was in the form of a resolution adopted in a meeting of the Board of Councillors. The entire extract of the resolution was communicated. The order itself records that opportunity of hearing was afforded to the parties. Both the parties were informed about the date and time of hearing. The petitioner had already filed a representation along with all supporting documents in support of his case. The learned Single Judge had recorded in the order passed on September 20, 2018 in the contempt proceeding that notice of hearing was issued to the parties, but no one had turned up. The High Court still decided to dispose of the contempt application directing implementation of such order. Thus, the question of violation of principles of natural justice would not arise. This question could not be raised at this stage.

(vii) The learned court below, upon perusal of the entire records had also arrived at the findings that there was no violation of the principles of natural justice. The second contention of Mr. Chatterjee is also incorrect. The order of the High Court is quoted below:-

“There has been undoubtedly an unusual delay in complying with the court’s order. It appears from the affidavit that pursuant to the order passed by this court on December 11, 2015, a notice of hearing dated July 31, 2017 was sent to the parties but no one turned up on that date as well as on the dates subsequent thereto.

However, Mr. Chatterjee, the learned advocate for the alleged contemnors, submits that there were earlier notices which the petitioner admits. The petitioner claims that on two or three occasions he also attended the hearing.

I find no justification for the alleged contemnors to sit over the matter if the parties had not appeared at the hearing. They were required to dispose of the matter in accordance with law.”

(viii) With regard to the additional evidence not being allowed, the

learned court observed that the entire records were before the court.

All the documents, reports of the Assistant Engineer, the orders of Hon’ble High Court were before the court. Hence, there was no reason to allow the application for adducing additional evidence.

(ix) Upon perusal of the application seeking leave to file additional evidence under Order XLI Rule 27 of Code of Civil Procedure, this court finds that apart from the sanction plan and the reports of the engineer which were already on record, no further document were sought to be adduced. Thus, such contention of Mr. Chatterjee, also fails.

(x) In the writ petition WP 29469 (W) of 2014, the following order was passed, on March 19, 2015.

“Report has been filed by the Assistant Engineer, P.W. Department, Baranagar Municipality.

In the report, deviation on five counts have been pointed out in relation to the construction of premises no. 302/1/B, Gopal Lal Tegore Road, Kolkata - 700 036 as on 8th November, 2014.

In this matter Demolition Notice in terms of Section 218 of the Bengal Municipal Act, 1992 has been issued.

Let this matter be listed under the same heading on 6th April, 2015.

The respondent no. 5 shall not make any construction in deviation of the sanctioned plan or in violation of the Building Rules in the meantime.”

(xi) The matter was finally listed before another court. The learned judge, by order dated December 11, 2015, passed the following order:-

“Mr. Arijit Dey, the learned Advocate for the Baranagar Municipality submits that the Municipality has already initiated a demolition proceeding against the respondent no. 5 under Section 218 of the West Bengal Municipal Act as from the report filed by the Assistant Engineer attached to the said Municipality deviation on five counts have been pointed out in respect of the construction of the concerned premises.

In such view of it, there is nothing more to adjudicate in this writ petition.

The Municipality is directed to proceed with the proceeding in accordance with law and the procedure laid down therefor.

Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties on the usual undertakings.”

(xii) The order passed in contempt, inter alia, holding that the chairperson of the municipality was guilty of violation of the order of the court and further directing the chairperson to comply with the orders of the court within a time frame, is quoted below..

“It is unfortunate that the alleged contemnors did not only sit over the matter for a pretty long time, they have not taken any step even after the expiry of the period of the notice served upon Sri Shaw. The resolutions of the Board of Councilors was communicated to Sri Shaw on July 4, 2018 and it had expired on August 3, 2018. In one and half month's time. particularly when an application for contempt has been pending against the alleged contemnors, they did not bother to take appropriate steps for compliance of the court's order. Mr. Chatterjee decided to take resort to the use of the word 'may' in the relevant provision of the statute about the course of action to be taken by the municipal authorities in case the decision of the Board of councilors is flouted. The court directed Mr. Chatterjee to take instruction from the Chairperson of the municipality who is present in court. On instruction Mr. Chatterjee submitted that the respondents have decided to proceed with the demolition of the unauthorised portion of the concerned building of Sri Shaw in terms of the resolution of the

Board of Councilors. Such a decision ought to have been taken long before.

I direct the alleged contemnors to carry out the assurance given in court today through their learned advocate and recorded in their presence, positively within a period of six weeks to be counted from the date after the Laxmi Puja.

However, for the lapses already committed by the alleged contemnors, particularly for not taking any step even after the expiry of one and a half month's time from the resolution of the Board of Councilors was communicated to Sri Shaw, I hold the Chairperson of the concerned municipality guilty of contempt of court. It is true that the Board of Councilors comprises many members. But he or she who heads the body is to take the ultimate responsibility.

For the lapses already committed by the contemnors I hold the Chairperson of the Municipality to be guilty of contempt.

However, for the unconditional apology tendered by the contemnors I propose not to impose any punishment upon her after alerting her to comply with the timeframe fixed by this court.

With the directions as above, the contempt proceeding is dropped.

Personal presence of both of them is dispensed

Rules stand discharged.”

14. The High Court passed a direction upon the Chairman to implement the resolution taken by the Board. Thus, the allegation of lack of jurisdiction of the chairman is an afterthought.

15. Under such circumstances, the contention of the petitioner that there had been violation of principles of natural justice does not have any legs to stand. The petitioner was a party to the entire proceeding before the High Court and the municipality. The petitioner was aware of the inspection, the report and the findings of the authorities with regard to the extension of unauthorized construction. The allegation of Mr. Chatterjee, that the order of demolition was vague and without necessary details is also unacceptable.

16. It also appears to the court that the Act does not provide for regularization of any unauthorized construction. A person responsible for

unauthorized construction, cannot claim regularization as a matter of right. The municipal authorities were not bound to regularize the same. The decision of ***Dipak Kumar Mishra (Supra)*** is contrary to the above proposition of Mr. Chatterjee.

17. In this case, the municipal authorities had decided not to proceed with regard to excess construction of the roof slab on the east, west and south as the adjacent owners agreed to forgo the minimum space requirement.

18. However, such relaxation was not given in respect of the unauthorized construction on the northern side and a decision was adopted for demolition of the same. The petitioner having taken advantage of a portion of order by which relaxation was granted in respect of unauthorized construction on east, west and south, cannot assail the said order by impugning a part of the same which had gone against him.

19. The petitioner cannot be allowed to approbate and reprobate. In any event, an unauthorized constructed is liable to be demolished

20. The order impugned does not suffer from any irregularity.

21. The order of demolition and that of the learned Civil Judge, Junior Division are upheld. The municipal authority shall act in accordance with law.

22. Under such circumstances, the revisional application is dismissed.

23. There will be no order as to costs.

24. Parties are directed to act on the server copy of this judgment.

(Shampa Sarkar, J.)