

Item No.06

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

20.07.2023
Ct-24
AGM

WPA 16130 of 2023
Ashis Kumar Maity & Ors.

v.

The Board of Councillor, Chairman in Council Naihati
Municipality & Ors.

Mr. Sourav Sen
Ms. Adrisnata Chakraborty
... for the petitioners.

Mr. Kaustav Ch. Das
... For the Municipality.

Mr. Timir Baran Saha
... For the Private Respondent.

The petitioners are aggrieved by the communication made by the Chairman, Naihati Municipality on 4th July, 2023 directing demolition of the illegal and unauthorised portion at Sushama Apartment, 40, Shyam Road, Naihati, North 24 Parganas.

On a perusal of the impugned order it appears that the details of the unauthorised construction is not mentioned in the impugned order. The unauthorised construction is also not identified.

It appears that the said order was passed allegedly in compliance of the direction passed by the Court on 8th June, 2022 in WPA 4891 of 2019 (Naihati Sushama Apartment Resident's Welfare Association & Ors –Vs- The Naihati Municipality & Ors).

By the aforesaid order dated 8th June, 2022, the Municipality was directed to consider the issue of unauthorised construction afresh on merits after giving fresh opportunity of hearing to all the parties.

Allegation is that no opportunity of hearing was given to the parties. After an application for contempt was filed for non compliance of the direction passed in the order dated 8th June, 2022, on hurried basis the impugned communication dated 4th July, 2023 has been made.

Such act of the Municipality cannot be appreciated. It has long since the order was passed by the Court. A specific time period was mentioned within which the order was directed to be complied. The said time period is long over.

The impugned communication which was made in hot haste is an absolute cryptic one. Details of the unauthorised construction are not mentioned.

The person responsible will not be able to identify the portion which was held to be unauthorised and are liable to be demolished.

In view of the above, the impugned communication dated 4th July, 2023 is liable to be set aside and is accordingly set aside.

The Board of Councillors, Naihati Municipality is directed to decide the issue afresh after giving an opportunity of hearing to all the parties.

A spot inspection shall be conducted to ascertain the nature and extent of unauthorized construction.

The report of spot inspection shall be circulated amongst the parties and hearing taken thereafter.

A reasoned order shall be passed and communicated to the parties.

The entire exercise shall be concluded at the earliest but positively within a period of twelve weeks from the date of communication of this order.

The writ petition stands disposed of.

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

(Amrita Sinha, J.)