

D/L
Item No. 02
07.08.2023
KOLE

**MAT 1474 of 2023
With
IA No. CAN 1 of 2023**

**Sri Sujan Dutta
-Vs.-
Diptimay Chatterjee & Ors.**

*Mr. Ayan Banerjee,
Ms D. Dhamali,
Ms. R. Ghosh,*

...for the appellant.

*Mr. Sabyasachi Mukhopadhyay,
Ms. K. Banerjee,*

...for the respondent no. 1/writ petitioner.

*Mr. Tapash Kr. Bhattacharya,
Mr. A. Bhattacharya,*

...for the Municipality.

By consent of the parties, the appeal and the connected application are taken up for hearing together.

An order dated July 19, 2023, passed by a learned Single Judge of this Court in the writ petition filed by the respondent no. 1 herein, being WPA 7671 of 2023, is the subject matter of challenge in this appeal.

The writ petitioner approached the learned Single Judge for implementation of an order dated November 28, 2022, passed by the Chairman of Katwa Municipality, directing the appellant herein to demolish certain constructions. By the order impugned herein, the learned Judge directed the Municipality to proceed with the demolition of the entire unauthorized construction-glow signboard after recording submission made on behalf of the Municipality that part demolition of the impugned

construction has already taken place. Being aggrieved, the private respondent in the writ petition has come up by way of this appeal.

Learned Advocate for the appellant says that demolition order of which implementation has been directed by the learned Single Judge, is without jurisdiction and is a nullity. This is because Section 218 sub-Section (1) of the West Bengal Municipal Act, 1993 (in short 'the 1993 Act') authorizes/empowers the Board of Councilors of a Municipality to issue demolition order after being satisfied that illegal construction has been raised. In the instant case, there was no consideration of the issue by the Board of Councilors. The Chairman alone could not have issued the demolition order.

Learned Advocate for the respondent no. 1/writ petitioner says that the appellant duly participated at the hearing before the Chairman of the Municipality and the demolition order was passed after the principles of natural justice were duly observed. Now the appellant should not be permitted to turn around and say that the Chairman did not have the power to issue the demolition order. Learned Advocate also says that the Chairman has the power/authority to issue a demolition order under Section 218(5) of the 1993 Act.

Learned Counsel for the Municipality says that part demolition of the impugned structure has already been effected.

We have considered the rival contentions of the parties.

Section 218 of the 1993 Act reads as follows:-

“S. 218. Order for demolition or alteration of buildings in certain cases._

(1) If the Board of Councillors is satisfied-

(a) that the erection of any building-

(i) has been commenced without obtaining sanction or permission under the law, or

(ii) is being carried on or has been completed otherwise than in accordance with the particulars on which such sanction or permission was based, or after such sanction or permission has been lawfully withdrawn, or

(iii) is being carried on or has been completed in breach of any provision contained in this Act or in the Schedule or in any rules or regulations in this behalf, or

(b) that any building or projection exists in violation of any condition, direction or requisition lawfully given or made under this Act or the rules or the regulations made thereunder, or

(c) that any material alteration of, or addition to, any building has been commenced or is being carried on or has been completed in breach of any provision contained in this Act or the Schedule or in any rules or regulations in this behalf,

it may, after giving the owner of the building a reasonable opportunity of being heard, make an order directing that such erection, alteration, addition or projection, as the case may be, or so much thereof as has been executed unlawfully, be demolished or altered and, upon such order, it shall be the duty of the owner to cause such demolition or alteration to the satisfaction of the Board of Councillors within such period as may be fixed in this behalf. In default, such erection, alteration, addition or projection, as the case may be, may be demolished or altered by the Board of Councillors at the expense of the said owner.

(2) The procedure relating to the opportunity of hearing to be given to the owner of the building under sub-section (1) shall be such as may be prescribed.

(3) An appeal against an order made by the Board of Councillors in this behalf shall lie with the Court having jurisdiction

[(4) Omitted.]

(5) Notwithstanding anything contained in the foregoing provisions of this section or elsewhere in this Chapter, if the Chairman-in-Council is of opinion that immediate action is necessary in respect of any building being constructed, or any work being carried on, in contravention of the provisions of this Act, it may, for reasons to be recorded in writing, cause such building or work to be demolished forthwith."

On a reading of the said section, it is quite clear that the satisfaction of the Board of Councilors that a construction has been made illegally, is a pre-condition for issuance of a demolition order. Sub-Section 5 reserves to the Chairman-in-Council emergency power to demolish an unauthorized structure. In the present case, it was not the Chairman-in-Council which issued the order. It was the Chairman alone who passed the order of demolition. In our considered opinion, the Chairman alone is not empowered or authorized by the 1993 Act to issue a demolition order. We agree with learned Advocate for the appellant that the order of demolition is non-est in the eye of law and no further effect can be given thereto.

We direct the Board of Councilors of Kawta Municipality to revisit the issue of the appellant herein having made unauthorized construction. For that purpose a proceeding will be initiated immediately as per the provisions of the 1993 Act. Opportunity of hearing shall be granted to the appellant herein as also the writ petitioner or their authorized representatives. The Board of Councilors shall take a reasoned decision in the matter. We do not bind

the hands of the Board of Councilors to decide the matter in any particular manner. The Board shall take a decision in accordance with law and the applicable rules and regulations, if any. If the Board of Councilors finds that there is substance in the grievance of the writ petitioner that the appellant herein has made unauthorized construction, the Board of Councilors will be at liberty to deal with such unauthorized construction in accordance with law. Let the entire exercise be completed within a fortnight from the date of communication of this order by the parties to the Chairman of the Katwa Municipality.

We clarify that we have not gone into the merits of the matter. The Board of Councilors shall take an informed decision in accordance with law.

The order under appeal and also the order of the Chairman dated November 28, 2022, and all consequential orders are set aside. Learned Advocates for the parties say that no useful purpose will be served by keeping the writ petition pending.

Since we have not called for affidavits, the allegations made in the stay application are deemed not to be admitted by the respondents.

The appeal, the connected application and the writ petition are, accordingly, disposed of, treating the writ petition as on day's list.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Apurba Sinha Ray, J.) (Arijit Banerjee, J.)