

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side**

Present :- Hon'ble Justice Amrita Sinha

WPA 21200 of 2022

**Onex Housing LLP & Anr.
Vs.
Asansol Municipal Corporation & Ors.**

With

WPA 15913 of 2022

**Bhupindar Singh Atwal
Vs.
The State of West Bengal & Ors.**

For the petitioners in
WPA 21200 of 2022 and
for the private respondent
in WPA 15913 of 2022

:- Mr. Subir Sanyal, Adv.
Mr. Om Narayan Rai, Adv.
Mr. Nikhilesh Mittal, Adv.

For the respondent no. 7 in
WPA 21200 of 2022 and for
the petitioner in WPA 15913
of 2022

:- Mr. Probal Kumar Mukherjee, Sr. Adv.
Mr. Avirup Mondal, Adv.
Ms. Ahana Ghosh Mondal, Adv.

For the AMC
[in both the matters]

:- Mr. Sounak Bhattacharya, Adv.
Mr. Abhirup Halder, Adv.

For the State

:- Mr. Jahar Dutta, Adv.
Mr. Bipin Ghosh, Adv.

Hearing concluded on

:- 03.04.2023

Judgment on

:- 13.04.2023

Amrita Sinha, J.:-

The facts of the case are recorded in the order dated 24th March, 2023.

Learned advocate representing Onex has raised an issue with regard to the jurisdiction of the Executive Engineer in passing the order of demolition. The

further contention of Onex is that the inspection report prepared at the instance of the said Executive Engineer also cannot be taken into consideration.

Asansol Municipal Corporation has filed an affidavit annexing copy of the order dated 10th June, 2021 signed by the Chairperson, Board of Administrators of the Corporation mentioning the names of the Executive Engineers who would look after the civil work, water supply work including allied matters of the borough offices in addition to their own assignments.

Relying upon the aforesaid delegation the concerned Executive Engineer caused a spot inspection by the technical persons and a report was prepared. The infringements were clearly mentioned in the report.

Onex contends that in view of the notification published by the department of Urban Development and Municipal Affairs dated 22nd March, 2021 appointing the Commissioner of the Corporation as Administrator of the Municipal Corporation till the new Board of Councillors of the Corporation takes over charge, the members of the Board of Administrators appointed prior thereto ceased to function with the issuance of the notification.

By a further a notification dated 16th August, 2021 the members of the Board of Administrators were appointed by the Department of Urban Development and Municipal Affairs in the name of the Governor.

The sheet anchor of the submission of Onex is that the Executive Engineer does not have the authority to pass the order of demolition. The contention of Onex is that the Commissioner is the statutory authority to pass the order of demolition.

On the other hand, Bhupindar contends that the Executive Engineer was duly delegated the power by the Commissioner to deal with any unauthorised construction work and accordingly the order of demolition passed by the Executive Engineer is liable to be implemented.

On a perusal of the aforesaid notifications it does not appear that the same in any manner curtails the power of the Commissioner to delegate any of his powers and functions to any other officer or any employee of the Corporation. The Commissioner is an officer of the Corporation and the said notifications do not take away any power and function of the Commissioner and the Commissioner is entitled to act in accordance with the Act.

According to the provisions of the Act, subject to the standing orders as may be made by the Mayor in Council, the Commissioner may by order delegate, subject to such conditions as may be specified in the order, any of his powers or functions to any other officer or any employee of the Corporation.

The objection of unauthorized construction filed by Bhupindar appears to have been placed before the Commissioner and the Commissioner directed the concerned engineer to look into the issue. Spot inspection was caused in the presence of both the parties and the status of the construction work was recorded in the inspection report.

The contention of Onex that the inspection conducted at the instance of the engineer is bad in law cannot be accepted by the Court. Causing any fresh inspection at this stage will not serve the purpose to ascertain as to whether the previous construction was demolished or not. Bhupindar contends that portions of the existing structure were demolished and new construction made thereon on the garb of repairing the old structure. Fresh inspection at this stage may not reveal the demolition of the old existing structure as, by now, evidence of all existing and old structure may not be available.

Without going into the issue as to whether the Executive Engineer had the authority to pass the order of demolition or not, the Court thinks it fit to remand the matter back to the Commissioner to decide the issue afresh after giving opportunity of hearing to both the parties. The parties will be entitled to rely upon the earlier inspection report at the time of hearing before the Commissioner.

The Commissioner is directed to pass fresh order in the matter in accordance with law at the earliest, but positively within a period of eight weeks from the date of communication of this order. If required, the Commissioner may cause fresh spot inspection upon prior notice to both the parties.

The demolition order passed by the Executive Engineer shall be kept in abeyance till fresh order is passed by the Commissioner as mentioned herein above.

Both the writ petitions stand disposed of.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)