

Item No. 10  
11.10.2023  
Court. No. 19  
GB

C.O. 3067 of 2023

Smriti Das & Ors.  
Vs.  
The Panihati Municipality & Ors.

*Mr. Prantick Ghosh,*  
*Mr. Pranab Kr. Bhattacharyya,*  
*Mr. Prasad Bhattacharyya*

*...for the Petitioners.*

*Mr. Soumyajit Bhatta*

*...for the Opposite Party Nos.2 to 5.*

*Mr. Saumitra Banerjee*

*...for the Opposite Party No.4.*

Affidavit-of-service and affidavit-in-opposition filed in  
Court today, be kept with the record.

The revisional application has been filed challenging  
an order dated December 9, 2022 passed by the learned Civil  
Judge (Junior Division), 2<sup>nd</sup> Court at Barrackpore, rejecting  
an application for stay of the demolition. Such order was  
passed in Municipal Appeal No.08 of 2022.

The learned court was influenced by order of the High  
Court in a writ petition wherein the municipal authorities  
were directed to enquire into the matter and decide whether  
there had been any unauthorized construction or not. The  
petitioners preferred an appeal before this Court from the  
order of the learned Single Judge.

The order passed in the writ petition being WP 6843  
(W) of 2019 was not interfered with by the Hon'ble Division  
Bench in MAT 1358 of 2019. By order dated July 20, 2022  
the Hon'ble Division Bench directed that the appellants  
therein as also the writ petitioner/complainant would be

heard and if the municipal authorities found that there was unauthorized construction, steps would be taken in accordance with law. On the basis of the aforementioned order of the Hon'ble Division Bench, the Chairman, Panihati Municipality by notice dated September 2, 2022 called upon both the parties to attend a hearing at his chamber on September 14, 2022 at 4 p.m. Accordingly, parties participated in the proceeding and the order dated November 24, 2022 was communicated by the Chairman. The communication dated November 24, 2022 has been captioned as 'decision-cum-communication letter'. The authority found that there had been unauthorized construction and deviation from the sanction plan.

Challenging the aforementioned decision, Municipal Appeal No.08 of 2022 was filed in terms of provisions of Section 218(3) of the West Bengal Municipal Act, 1993. Point raised in the said municipal appeal was that the Chairman lacked jurisdiction to conduct a hearing in the absence of the board of councillors. This point, in my opinion, will be decided in the appeal. The appeal is still pending. However, the learned court did not pass any order of stay of the demolition. It also appears that during the pendency of the appeal, a further notice of demolition was issued to the petitioners. The petitioners prayed for stay of demolition, pending disposal of the appeal on the ground that unless the demolition was stayed, the appeal would become infructuous and the situation would become irreversible.

Mr. Bhatta, learned advocate for the municipality submits certain documents to show that an inspection was made, a hearing was given and order was passed by the Chairman and approved by the board of councillors. According to Mr. Bhatta there has been substantial compliance of the provisions of law.

The learned advocate for the opposite party no.4 submits that the revisional application ought to be dismissed on the ground that a contempt application is pending against the municipality before the Hon'ble Division Bench, being CPAN 428 of 2023. It is further contended that the conduct of the petitioners have been suspicious as they were simultaneously moving an application under Section 151 of the Code of Civil Procedure and also the revisional application. It is further submitted that under Section 218(5) of the West Bengal Municipal Act, 1993, the Chairman had the power to take steps to demolish any unauthorized construction on an urgent basis.

Heard the learned advocates for the respective parties. It appears to this Court that neither the learned single Judge while disposing of the writ petition nor the Hon'ble Division Bench while disposing of the appeal had directed that the demolition should be effected immediately. In both the proceedings, the municipal authorities were directed to take steps in accordance with law, which necessarily implies that the municipal authorities should reach the demolition proceedings to its logical conclusion, and unauthorized

construction should be demolished, however, all such action must be in compliance with the law.

The law also provides an opportunity to the persons aggrieved by an order of demolition to prefer an appeal in terms of Section 218(3) of the West Bengal Municipal Act, 1993. The petitioners exercised such right by preferring the appeal. The statutory right conferred upon the petitioners cannot be taken away by any court of law.

Thus, this Court is of the view that the appeal which was filed within two weeks from communication of the order of demolition, should be heard on its own merits. The issue is whether the demolition process should be stayed in the meantime.

In my opinion, the questions of law which had been raised by the petitioners in the appeal has to be adjudicated. The question being whether the Chairman in the facts of this case, had the authority to independently hear the proceeding and pass necessary orders of demolition and thereafter seek approval from the board of councillors. This issue is not to be decided in this proceeding, but the learned appellate forum should decide the matter by interpreting the law and upon consideration of the facts which will be before the court.

If, during the pendency of the appeal the portion of the property is demolished, but the petitioners are ultimately successful in the appeal, the petitioners cannot be put back to their original position. The situation will become irreversible. The balance of convenience and inconvenience is thus in favour of passing an order of stay of the demolition till the

appeal is disposed of. The inconvenience to be suffered by the complainant or the municipality, is delay of a few months in implementation of the order of demolition, in case the appeal fails. The inconvenience that would be suffered by the petitioners if the demolition takes place before their statutory right of appeal is exhausted by a proper adjudication, is much greater.

Under such circumstances, the revisional application is disposed of. The order impugned is set aside. The learned court below is directed to decide and dispose of the appeal on its own merits, without being influenced by any observations on the merits of the proceedings made in this revisional application, within a period of two months from the date of communication of this order.

In view of the urgency involved, this Court directs the parties to put on record the order of this Court by a put up petition and the learned court below may be requested to prepone the hearing and dispose of the appeal. The demolition order shall remain stayed till the appeal is disposed of.

Accordingly, the revisional application is disposed of.

All the parties are directed to act on the basis of the server copy of this order.

**(Shampa Sarkar, J.)**