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20-12-2023
(Ct. no.06)
debajyoti

**IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE**

**MAT 2381 of 2023
+
IA NO:CAN/1/2023
+
CAN/2/2023**

**Nagma Parveen
Vs.
The State of West Bengal & Ors.**

Mr. Raghunath Chakraborty,
Mr. Debashis Banerjee,
Mr. Pawan Kumar Gupta,
Mr. Vijay Verma,
Mr. Subrata Saha,
Mr. Rakesh Jana

... For the Appellants.

Mr. Ayan Banerjee,
Ms. Debasree Dhamali

... For Bally Municipality.

Mr. Sandipan Banerjee,
Mr. Ankit Sureka,
Mr. Sobhan Majumder

... For Howrah Municipal
Corporation.

Mr. Subhasish Pachhal

... For Respondent Nos.11 & 12.

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

It appears that unauthorized construction was made at Premises No.144, Girish Ghosh Road, Post Office-Belur Math, Howrah-711202, under the jurisdiction of Bally Municipality.

A complaint was lodged regarding such alleged illegal construction. Alleging that the Municipality did

not take any steps on the basis of such complaint, the complainant filed a writ petition being WPA 101 of 2022 before a learned Judge of this Court. By an order dated February 24, 2022, the writ petition was disposed of directing the Municipality to take necessary steps in the matter in accordance with law.

In terms of the aforesaid order, the Municipality held proceedings, heard the concerned parties and passed an order on June 28, 2022, holding that the entire building is unauthorized and is not backed by any sanctioned plan. The persons responsible were directed to remove/demolish the entire construction at their cost within fifteen days from the date of receipt of the demolition order, failing which, the municipal authority would demolish the same without further notice.

Since nothing was happening after such demolition order was issued by the Municipality, the complainants, namely, one Abul Kalam and another, again approached a learned Single Judge of this Court by filing WPA 23214 of 2022 for implementation of the demolition order issued by the Municipality.

By an order dated November 22, 2022, the learned Judge directed the Municipality to take steps for demolition of the unauthorized construction at the earliest, but, positively within a period of six weeks from the date of that order. The Commissioner of Police, Howrah Police Commissionerate, was directed to render all necessary police assistance to the men and agents of Bally Municipality at the time of demolition of the unauthorized structure.

It appears that subsequently, one Sultan Khan, claiming to be the developer of the building in

question, filed a writ petition being WPA 28971 of 2022, challenging the demolition order issued by the Municipality. That writ petition and the writ petition of Abul Kalam and another being WPA 23214 of 2022 were taken up together by the learned Single Judge on March 22, 2023. On that date, the learned Judge recorded an order to the following effect:-

" It appears from the averments made on behalf of Sultan Khan that without any formal permission from the owners, the said Sultan Khan somehow managed to make construction over the subject premises. The owners never disclosed before the Municipality that they engaged anybody as developer for raising construction thereon. Upon a direction passed by this Court the owners had to be produced personally in Court through the Commissioner of Police, Howrah Police Commissionerate, when the owners admitted that they do not have any plan for raising construction. Before this Court also, the owners did not make any submission with regard to engagement of any developer for raising construction on their property.

Law mandates raising construction only after obtaining a sanction from the municipal authority and not in the absence of the same. The municipal law is required to be strictly followed as contravention of the same may infringe private rights of other parties.

The structure in question being constructed without any sanction plan is liable to be demolished in accordance with the direction passed by the Bally Municipality.

As Sultan Khan has admittedly accepted responsibility for raising construction without any permission, accordingly, the said Sultan Khan is directed to take steps for demolition of the subject structure positively by 13th April, 2023.

In the event Sultan Khan fails to demolish the said structure within the time limit stipulated hereinabove, Bally Municipality shall take steps for demolition of the same and recover the costs for demolition from the said Sultan Khan.

Bally Municipality on 29th November, 2022 has already assessed the cost of demolition at Rs. 8,72,240/- only. Bally Municipality has submitted that till the aforesaid cost is deposited in the office of the Municipality, it will not be possible for the Municipality to take steps for demolition of the unauthorized structure.

The structure in question in that event shall remain attached with the Bally Municipality.

The bank statement of Sultan Khan in the State Bank of India, Liluah Branch updated on 13th February, 2023 filed in Court be retained with the records.

The Inspector-in-Charge, Belur P.S is directed to cause an enquiry to find out the other bank details of Sultan Khan, son of Nabiullah Khan of 143, Girish Ghosh Road and also 15/2, Jaya Bibi Road, P.O. Ghosuri, Howrah to ascertain from where the money was spent for raising construction and as to whether the aforesaid amount of Rs. 8,72,240/- is available in his bank account. It will be open for the police to verify the Income Tax Return details filed by Sultan Khan to enquire about his financial stability.

Till the aforesaid amount is deposited by Sultan Khan before the Bally Municipality, the Municipality shall not permit the aforesaid Sultan Khan to continue any construction work within its municipal area.

Let the matter appear in the list once again on 26th April, 2023 to review the situation."

Challenging the said order dated March 22, 2023, Sultan Khan preferred an appeal before the

Division Bench. The Division Bench did not interfere, but granted liberty to Sultan Khan to pray for a right of hearing before the learned Single Bench. Such prayer was not acceded to. Challenging such refusal, Sultan Khan again approached the Division Bench by filing MAT 771 of 2023. The appeal was dismissed by the Division Bench.

On April 28, 2023, another order was recorded by the learned Single Judge on the aforesaid two writ petitions, directing Howrah Municipal Corporation to provide its service for demolition of the unauthorized construction, since the Municipality had expressed its inability and lack of infrastructure/resources to carry out the demolition order.

On May 10, 2023, a further order was passed by the learned Single Judge on the said two writ petitions, directing Bally Municipality to deposit Rs.10,000/- in the account of Howrah Municipal Corporation, being the cost of demolition.

The two writ petitions again came up for hearing before the learned Single Judge on June 15, 2023. On that date, an order was recorded, the relevant portion whereof reads as follows:-

" The G+4 storied building is occupied and as the occupiers failed to vacate the premises, the demolition could not take place.

It has been mentioned that some portion on the 4th floor of the building could be vacated and the demolition squad made a hole in a portion of the ceiling of the 4th floor.

The report mentions that demolition may not be possible without vacating the flat owners of the said building.

The structure in question is a G+4 storied building constructed without any sanction plan and facing an order of demolition. The entire building is liable to be demolished.

The Corporation cannot shirk of its responsibility to demolish the entire structure allegedly on the ground of the same being occupied.

It is the duty to police to vacate the premises by any means whatsoever so that the structure can be pulled down. Permitting the structure to remain will amount to perpetrating injustice in the society.

It is the bounden duty of the police to vacate the occupants who are forcefully occupying the structure constructed unauthorizedly.

The Commissioner, Howrah Police Commissionerate is directed to take up the issue along with Belur Police Station to ensure that the unauthorized occupants can be removed from the subject premises so that demolition can be concluded.

The Commissioner, Howrah Police Commissionerate is directed to affix notices in the outer walls of the subject premises to make the occupants aware that the structure in question is an unauthorized one, liable to be demolished.

The date within which the subject premises is to be vacated shall be mentioned in the notice. The occupiers shall be bound to vacate the same within the time specified in the notice.

A date of demolition shall also be mentioned. On the said date the men and agents of the Howrah Municipal Corporation shall remain present at the spot for demolishing the construction.

Aforesaid steps shall be taken in the matter at the earliest and the demolition shall positively be concluded within a period of sixty days. “

Challenging the aforesaid order, the present appellant came up before the Division Bench by filing MAT 1671 of 2023. Since she was not a party to the two writ petitions on which the said order was passed, she prayed for leave to appeal. Such leave was granted. A coordinate Bench disposed of the appeal by a judgment and order dated September 06, 2023 with the following observations and directions:-

“ The appellant claims an independent right to be heard before demolition of the building is carried out. Mr. Ayan Banerjee, learned advocate for the Municipality, says that the appellant has no such right to be heard.

Leaving all questions open including the appellant's right to be heard before the Municipality, to cut short the matter, we direct the Municipality to hold a hearing on Monday (September 11, 2023) at 12-00 noon. No further notice of such meeting shall be given. This order will serve as such notice. The appellant, the writ petitioners and if Howrah Municipal Corporation so wishes, will be entitled to participate in such meeting. The Competent Authority of the Municipality shall pass a fresh order after such hearing. We do not bind the hands of the authority to pass the order in any particular manner. The order will be passed in accordance with law and the applicable rules and regulations. The Competent Authority shall, if possible, pass the order on Monday (September 11, 2023) itself or latest by Wednesday (September 13, 2023) and shall immediately communicate the same to the parties concerned.

The order of demolition shall, for the time being, be kept in abeyance. If any fresh different order is passed, the

same will supercede the order of demolition. If similar order is passed, naturally, the order will take effect. ”

It appears that pursuant to the aforesaid direction of the Division Bench, the Administrator of Bally Municipality held a hearing on September 09, 2023. All concerned parties including the present appellant participated at such hearing. An order was passed on September 12, 2023, the relevant portion whereof reads as follows:-

“ It is to be noted that the landlord of the appellant was served notice under Section 218 and hence it cannot be said that he was not given sufficient opportunity of hearing. vii. In the aforesaid facts and circumstances, it appears that the Municipal Authorities have passed the order of demolition by following due process as contemplated in Section 218 of the West Bengal Municipal Act 1993. The present appellant claiming to be a tenant has been heard at length but she does not have a separate right of audience under Section 218. She is claiming through her landlord being the owner. The owners have not preferred any appeal against the order of demolition. Moreover, on 18.01.2023, it was categorically recorded by the Hon’ble Single Bench that all the private respondents should appear before the Hon’ble Court personally on 01.02.2023. Pursuant to such direction, the landlord of the present appellant along with all co-owners of the said premises were present personally before the Hon’ble Court. However no objection was raised at any point of time citing pendency of any Civil Suit by the said landlord. It is also to be noted that the Hon’ble Court has passed the order for demolition of the said building after considering the order of the Civil Court which is an order of status-quo between the parties to a Partition Suit. In such facts and circumstances, the prayer of the appellant for staying the demolition process or the order of demolition is considered and rejected.

In view of such decision, it may be noted that the order of demolition which was passed earlier and kept in abeyance by order dated 06.09.2023 shall stand revived. Necessary steps shall be taken by the Municipal Authorities in terms of the directions of the Hon'ble High Court. "

In the present round of litigation, the appellant approached the learned Single Judge challenging the order dated September 12, 2023 passed by the Administrator of the Municipality whereby the demolition order was reiterated. Several other prayers were made in the writ petition including a direction on the Administrator of the Municipality to furnish a certified copy of the order dated September 12, 2023 to the appellant, as she intends to prefer statutory appeal against the same. It has also been contended that the Administrator is no more competent to act as Administrator, since the maximum term contemplated by Section 431 or Section 14(3) of the West Bengal Municipal Act, 1993, has expired. A further prayer was made to restrain the respondent authorities from demolishing the impugned structure.

On the aforesaid writ petition, the learned Judge passed an order dated December 07, 2023, which is impugned in this appeal. The relevant portion of the said order reads as follows:-

" Premises no.144, Girish Ghosh Road, Belur, Howrah has been constructed in an unauthorised manner without obtaining any sanction plan.

Order of demolition has been passed by the Bally Municipality and the demolition proceeding is scheduled to commence on and from 11th December, 2023.

The Municipality specifically raises objection with regard to the locus of the petitioner in filing the

present writ petition. It has been submitted that a tenant does not have a right to be heard under Section 218 of the West Bengal Municipal Act, 1993. Nevertheless, it appears that in terms of the order passed by the Hon'ble Division Bench, the petitioner was duly heard.

Time and again, writ petitions are filed before this Court at the instance of the owners, tenants including the developers trying to resist the demolition. The writ petitioner was also heard.

All the parties were heard by the Municipality and the order of demolition has been reiterated on repeated occasions. There has been no violation of principle of natural justice or any other provision of law in passing the impugned order of demolition.

At this stage, the Court is not inclined to exercise jurisdiction in the writ petition.

The Municipality is directed to proceed the demolition as scheduled. ”

Being aggrieved, the writ petitioner has come up by way of this appeal.

Learned advocate for the appellant/writ petitioner has argued, firstly, that the appellant is a person interested in the alleged unauthorized structure and, therefore, ought to have been heard by the Municipality prior to a demolition order being issued. He has referred to various sections of the West Bengal Municipal Act, 1993 including the Explanation to Section 204(A) and Section 223 of the West Bengal Municipal Act, 1993. Section 204(A) provides for punishment of a person, who violates certain provisions of the 1993 Act. Section 223 provides for power of the Board of Councillors of a Municipality to order demolition of buildings, which

are in a dangerous or ruinous state or unfit for human habitation.

Those sections have no relevance to the point in issue. Section 218 clearly states that order for demolition of a building may be passed by the Board of Councillors where such building has been raised without a sanctioned plan or in deviation from a sanctioned plan after getting the **owner** of the building a reasonable opportunity of being heard. In the present case, there is no dispute that the **owner** of the building was heard before the initial demolition order was passed by the Municipality.

The second point urged by Mr. Chakraborty, learned advocate for the appellant, is that the earlier direction of the Division Bench was on the Municipality to hear the appellant. The Administrator was not competent to hold such hearing. The Administrator is not the Municipality. Municipality is defined in Sections 12 and 13 of the 1993 Act. Hence, there was no due compliance with the earlier order of the Division Bench.

We are unable to accept the submission. Under the relevant provisions of the 1993 Act, be it Section 431 or Section 14, in the absence of a Board of Councillors, where the Government appoints an Administrator, such person discharges all the functions of the Board of Councillors. In the present case, admittedly, the Municipality does not have a Board of Councillors. Be it noted, earlier this Municipality had merged with Howrah Municipal Corporation. However, sometime in 2021, there was a de-merger and the Municipality regained its independent entity. Since then, the Board of Councillors for that Municipality has not been

constituted. Hence, there was nothing irregular in the Administrator of the Municipality granting a hearing to the appellant and other concerned parties and passing the order dated September 12, 2023.

The point urged by Mr. Chakraborty that the Administrator has over-run the maximum prescribed statutory period and is no more competent to act in that capacity, does not also appeal to us. The administration of the Municipality cannot be in a vacuum. So long as a Board of Councillors is not constituted by following due process of law, the Administrator, as of necessity, must continue to discharge the functions of the Board of Councillors.

Mr. Chakraborty also argued that no coercive action should be taken till a certified copy of the Administrator's order dated September 12, 2023, is made over to the appellant to enable her to prefer statutory appeal. Mr. Ayan Banerjee, learned advocate, representing the Municipality, says that the aforesaid order of the Administrator is not an appealable order since it is not an order passed under Section 418 of the 1993 Act. We express no opinion on this point.

We have noticed that the demolition order was originally passed on June 28, 2022, following due process of law. From time to time, challenges were thrown by different parties to the said order and such parties have successfully prevented implementation of that order till now. It is not in dispute that the entire structure at the premises in question is unauthorized, having no sanction from the competent authority. We see no infirmity in the order of the learned Single Judge, which is sought to be assailed in this appeal. Illegal construction, which is becoming a bane of the

society at the instance of unscrupulous builders who have no respect for the law of the land, must be discouraged at all costs.

It is possible that the appellant herein has been taken for a ride by the builder who put up a huge structure without bothering to obtain a sanctioned building plan from the competent authority. If that is so, the appellant's remedy lies elsewhere. She may well claim damages against the builder, if she thinks that she has been cheated.

We see no reason to interfere with the order under appeal. The appeal and the connected applications are, accordingly, dismissed. The interim order stands vacated.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance of all necessary formalities.

(M. V. Muralidaran, J.) (Arijit Banerjee, J.)