

IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

MAT 404 of 2024

IA NO: CAN 2 of 2024

CAN 3 of 2024

CAN 4 of 2024

Sanchita Basu & Anr.

Vs.

Commissioner, Bidhannagar Municipal Corporation & Ors.

For the Appellants	: Mr. Jaydeep Kar, Senior Adv. Mr. Sourajit Dasgupta, Adv. Mr. Aditya Tiwari, Adv.
For the BMC	: Mr. Sirsanya Bandopadhyay, Adv. Mr. Tirthankar Dey, Adv. Mr. Arka Kr. Nag, Adv.
For the Respondent No. 3	: Mr. Sukanta Chakraborty, Adv. Mr. Anindya Halder, Adv.
Hearing Concluded on	: December 02, 2024
Judgement on	: December 11, 2024

DEBANGSU BASAK, J.:-

1. Appellants have assailed the order dated February 22, 2024 passed in WPA 4107 of 2024. By the impugned order learned Single Judge has dismissed the writ petition of the appellants challenging the order passed by the Commissioner, Bidhannagar Municipal Corporation dated January 24, 2024.

2. Learned senior advocate appearing for the appellants has contended that, the Commissioner of Bidhannagar Municipal Corporation by his order dated January 24, 2024 found car parking space being converted into flats and therefore directed demolition thereof. He has submitted that, in the event, the order of demolition of the Bidhannagar Municipal Corporation is implemented then, two ladies who are the appellants herein would be rendered homeless.

3. Learned senior advocate appearing for the appellants has contended that, the appellants are residing at the subject property in respect of which there subsists an order of demolition passed by the Bidhannagar Municipal Corporation. He has drawn the attention of the court in the manner in which, the subject property devolved upon the appellants. He has contended that, the husband of the appellant No. 1 and the father of the appellant No. 2 expired. Today, none of the appellants have any other shelter.

4. Learned senior advocate appearing for the appellants has submitted that, the area under occupation of the appellants is at the ground floor of the subject premises. He has contended that, the act of putting up the wall at the ground floor is a minor deviation from the sanctioned building plan which can be regularised by the Bidhannagar Municipal Corporation. None of the appellants have constructed the flat. Such flat had been gifted to the deceased

husband of the appellant No. 1 and father of the appellant No. 2. In support of his contentions, he has relied upon sections 272 and 273A of the West Bengal Municipal Corporation Act, 2006 as also Rules 2(6), 31, 32 (2), 34 and 52 (5) of the West Bengal Municipal (Building) Rules, 2007 and section 212 of the West Bengal Municipal Act, 1993.

5. Learned advocate appearing for the respondent has contended that, the provisions of the Act of 1993 and 2006 do not permit conversion of a parking space into a residential flat. Such conversion cannot be treated as a minor deviation from the sanctioned building plan. In support of such contention, he has relied upon **2010 Volume 9 Supreme Court Cases 536 (Nahalchand Laloochand Private Limited vs. Panchali cooperative Housing Society Limited)**.

6. Joint owners of premises No. AA/14/1, Deshbandhu Nagar, Kolkata had such property developed under a development agreement. Bidhannagar Municipal Corporation had sanctioned a building plan in respect of such property. Ground floor of such property in the sanctioned building plan had been shown as car parking space.

7. Developer had constructed a flat on the ground floor at the portion of the space which was shown as car parking in the sanctioned building plan. Such flat had been shown as owner's allocation. Joint owners had gifted such flat to the husband of the

appellant No. 1 and the father of the appellant No. 2 as well as another daughter.

8. On an earlier writ petition being WPA 16487 of 2023 the High Court by an order dated September 20, 2023 had directed Bidhannagar Municipal Corporation to decide the issue of unauthorised construction concerning the subject flat.

9. Pursuant to such order dated September 20, 2023, Bidhannagar Municipal Corporation had passed an order dated January 24, 2024 holding that there was unauthorised construction in respect of the subject flat and directed demolition thereof. This order dated January 24, 2024 of Bidhannagar Municipal Corporation had been assailed by the appellants in their writ petition which has resulted in the impugned order dated February 22, 2024.

10. Apparently, there are disputes between the private parties. Learned Single Judge has noted such fact in the order dated September 20, 2023 passed in the earlier writ petition being WPA 16487 of 2023 and in the impugned order. Learned Single Judge has held that, the writ court is not concerned with the private disputes.

11. Order dated January 24, 2024 passed by the Commissioner, Bidhannagar Municipal Corporation that had been assailed by the appellants in the writ petition contains cogent reasons for passing the order of demolition. Sanctioned building plan in respect of the

building concerned has shown the area where the subject flat exists to be a car parking space. The appellants had been heard prior to passing of the order dated January 24, 2024.

12. Commissioner, Bidhannagar Municipal Corporation had undertaken an inspection of the subject property prior to passing his order dated January 24, 2024. Commissioner has held in his order dated January 24, 2024 that, as per sanctioned building plan there should have been a car parking space in the ground floor, whereas the entire ground floor has been converted into flats which are fully occupied. He has also noted that there exists a 4-storied structure at the concerned plot of land. The building on the concerned plot of land comprises of 21 flats and that such building had been constructed in the year 2000 and possession given to the flat owners in 2001.

13. The subject building had been constructed when the West Bengal Municipal Act, 1993 was in force. Completion certificate in respect of the subject building had been issued under the provisions of the Act of 1993. By virtue of section 403 of the West Bengal Municipal Corporation Act, 2006, with effect from the date of commencement of the Act of 2006, the provisions of the Act of 1993 have ceased to apply.

14. Section 272 of the Act of 2006 has dealt with the power of a municipal corporation to prohibit change of authorised use of the

building. Section 273A of the Act of 2006 has dealt with the power of a municipal corporation to allow trade along major roads. None of these two provisions can be read or construed in the facts and circumstances of the present case, to have permitted change of a designated car parking space in a sanctioned building plan to a flat. Similarly, none of the provisions of the West Bengal Municipal (Building) Rules, 2007 which have been relied upon by the appellants permit a car parking space as sanctioned in the building plan to be converted to a flat.

15. *Nahalchand Laloochand Private Limited (supra)* has construed the provisions of the Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 and held that, on a true and proper construction of the various provisions of the Act of 1963, parking areas (open to the sky or stilted portion) falls within the purview of “common areas and facilities”. In the facts of the present case, Commissioner, Bidhannagar Municipal Corporation has not held that, the car parking space was open to the sky or in the stilted portion. Nothing has been placed before us to suggest that, the provisions of the municipal law governing the subject property and Maharashtra Act are *pari materia*.

16. Be that as it may, the order passed by the Bidhannagar Municipal Corporation cannot be said to be perverse. It had been passed after hearing the respective parties. Such order cannot be said to be without jurisdiction or vitiated by breach of principles of natural justice.

17. Significantly, the order of demolition challenged in the writ petition is appealable under statute. Appellants have preferred not to avail of the statutory remedy. Scope of appeal is different than a writ petition. In an appeal, the appellate authority could have reappraised the evidence and substituted the finding arrived at by the Commissioner. A writ court cannot be asked to convert itself to an appeal court, particularly when there exists a statutory alternative remedy of appeal.

18. We find no merit in the instant appeal. MAT 404 of 2024 along with other connected applications are dismissed without any order as to costs.

[DEBANGSU BASAK, J.]

19. I agree.

[MD. SHABBAR RASHIDI, J.]

Later :

Learned Advocate appearing for the appellants seeks two months time to vacate the premises.

In the peculiar facts and circumstances of the present case, we grant such time as prayed for. Corporation will not implement the order of demolition for a period of two months from date.

[DEBANGSU BASAK, J.]

I agree.

[MD. SHABBAR RASHIDI, J.]