

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Gaurang Kanth

***M.A.T. 555 of 2024
(CAN 1 of 2024)***

Bhabatosh Jha

-Vs-

Bidhannagar Municipal Corporation & Ors.

For the Appellant : Mr. Ashim Kumar Routh, Adv.
Mr. Subhayan Barik, Adv.

For the Respondent : Mr. Shaunak Ghosh, Adv.
Nos.7 & 8 Mr. Biswaroop Bhattacharya, Adv.

For the BMC : Mr. Sirsanya Bandyopadhyay, Adv.
Mr. Arka Kumar Nag, Adv.
Mr. Tirthankar Dey, Adv.

Heard on : 07.08.2024

Judgment on : 07.08.2024

Joymalya Bagchi, J. :-

1. Appellant is aggrieved by the judgment and order dated 11.03.2024 whereby the Hon'ble Single Judge upheld the order passed by the Commissioner and directed the Commissioner to demolish portions of the building constructed beyond the sanctioned building plan.

2. Appellant is one of the flat owners in the building which is a G+5 structure. He made representation before the respondent-Bidhannagar Municipal Corporation alleging the car parking spaces had been converted into residential quarters by the office bearers of the owners' association in violation of Section 267 of the West Bengal Municipal Corporation Act, 2006. It was also alleged unauthorised construction had been made without prior sanction plan.

3. The representation not being acted upon, appellant approached this court in WPA 20183 of 2022 and the matter was remanded to the respondent-Corporation for taking appropriate decision.

4. Pursuant to the order respondent no.3 i.e. Commissioner, Bidhannagar Municipal Corporation heard the appellant as well as the private respondents i.e. owners' association and upon consideration of the inspection report passed the following order :-

“(i) The petitioner and respondent submitted building plans sanctioned by the Gopalpur-Arjunpur-III Gram Panchayat. The authenticity of both the plans cannot be ascertained as no record is available with us.

(ii) According to the building plan sanctioned on 28.04.93 submitted by the respondent, the building is VI storied structure as it exists.

(iii) During inspection it has been found that a toilet block exists at the back side beyond sanctioned building plan.

(iv) A small security gumty (1.4 x 1.4m) also exists beyond said sanctioned plan.

(v) It is also found that a cantilever of length about 1m is projected from 1st floor at one side of the building.

Under the facts and circumstances, it appears that an unauthorised construction beyond the sanctioned building plan have been erected as per inspection conducted by the officials of this Corporation pertaining to the subject property.

It also appears that erection of structure without any sanctioned building plan and written order permission from the Corporation is a gross violation of the provision of the West Bengal Municipal Act 2006 as well as West Bengal Municipal Building Rules 2007.

In view of the above the undersigned directs the private respondents to demolish the unauthorised construction erected without any valid sanctioned building plan within 4 (four) weeks from the receipt of this order failing which this Corporation will be compelled to take appropriate steps without any further reference as per provisions of relevant rules and acts to demolish the unauthorised constructions and recover the expenses of such demolition from the private respondent as per provisions of West Bengal Municipal Corporation Act, 2006. ”

5. The aforesaid decision was assailed by the appellant as well as the private respondents. Both the writ petitions were disposed of by identical orders. While appellant has assailed the order passed in his writ petition, no appeal has been preferred by the private respondents with regard to the order passed on their writ petition.

6. Learned Advocate for the appellant submits a building plan permitting the G+4 structure had been sanctioned by the Gopalpur-Arjunpur-III Gram Panchayat. Spot inspection shows a G+5 structure had been constructed. However, the Commissioner merely noted that a toilet block on the backside, security *gumti* room and a cantilever projecting from the first floor at one side of the building were beyond sanctioned plan. No finding was also recorded with regard to the illegal conversion of the car parking spaces into residential flats.

7. On the other hand, learned Advocate for the Bidhannagar Municipal Corporation submits the Commissioner directed demolition of all unauthorised constructions beyond sanctioned plan.

8. Learned Advocate for the private respondent nos.7 & 8 submits the G+5 structure had been regularised. He also submits the security

gumti room is no longer in existence as the same had broken down due to natural causes.

9. We have considered the impugned decision in the light of the aforesaid submissions.

10. From the materials on record it appears both the parties had submitted sanctioned building plan for a G+4 building. However, physical inspection of the premises shows a G+5 structure standing on the plot. Admittedly, no document showing sanction of the G+5 structure is placed before us. Plea of regularisation of an unauthorised additional floor under the extant building rules is inconceivable. Under such circumstances, there is no escape from the irresistible conclusion that the sixth floor constructed on the premises is an unauthorised one.

11. Strangely enough the impugned order does not expressly record this fact. On the other hand, other constructions like toilet block on the backside, small security *gumti* room and a cantilever projecting from the first floor had been enumerated as unauthorised constructions beyond the sanctioned plan. This gives an impression that the sixth floor unauthorisedly constructed does not fall within the category of unauthorised constructions found in the premises.

12. Moreover, the other issue viz. change of user of car parking spaces into residential flats/shop rooms without prior permission has not at all been addressed. The order is a laconic one and does not address the most germane and material issue relating to unauthorised construction.

13. Under such circumstances, we remand the matter before the Commissioner and direct him to pass appropriate order after giving opportunity of hearing to the appellant, private respondents and affected parties enumerating all unauthorised constructions beyond sanctioned plan in light of the observations made in this order as well as on the issue of illegal conversion of parking spaces into residential/residential units/shop rooms within six weeks from the date of communication of this order. Demolition order with regard to the unauthorised construction so enumerated by the Commissioner shall be forthwith passed and implemented in accordance with law.

14. With these directions, the appeal is disposed of.

15. In view of disposal of the appeal, connected application being CAN 1 of 2024 is also disposed of.

16. There shall be no order as to costs.

17. Photostat certified copy of this judgment, if applied for, be given to the parties on compliance of all formalities.

I agree.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)

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