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W.P.A. 9265 of 2021

Smt. Manasi Roy

-vs-

The State of West Bengal & Ors.

Mr. Kaustav Chandra Das,
Mr. Sk. Sahjahan Ali

....for the petitioner.

Mr. Jayanta Kumar Das,
Ms. Madhumanti Das

....for the respondent No.4.

Mr. Debasish Das

....for the respondent nos. 6 & 7.

By presenting this writ petition petitioner, *inter alia*, has prayed for implementation of the order dated 20th December, 2019 passed by the concerned authority of Egra Municipality (hereinafter referred to as the “said Municipality”) thereby demolishing the premises of the petitioner situates at Plot No.3108, Khatian No.2460, measuring 9 decimal land, Mouza- Kasba Egra under P.S.- Egra.

The learned advocate representing the petitioner submits that notwithstanding the application made by the petitioner being the owner of the aforesaid premises on 23rd September, 2019 the private respondents being the occupants of part of the said premises have got no right of deliberation before the Board of Councillors of the said Municipality while taking decision in terms of

Section 223 of the West Bengal Municipal Act, 1993 (hereinafter referred to as the “said Act of 1993”). According to the petitioner, father of the private respondents was the tenant of the said premises. Therefore, private respondents being the successors of the original tenant at present have got no right to be considered as tenants of the said premises.

In view of aforesaid situation with regard to right of occupation of the private respondents in the aforesaid premises the concerned authority of the Municipality has not committed any wrong in deciding the issue unilaterally without granting opportunity of making deliberation while taking decision in terms of Section 223 of the said Act of 1993. Therefore, a mandamus has been prayed for giving direction upon the Municipality or permitting the petitioner to demolish the aforesaid premises in terms of the order as contained in the memo dated 20th December, 2019.

Mr. Jayanta Das, learned advocate representing the said Municipality and Mr. Debasish Das, learned advocate representing the private respondents have jointly opposed the prayer of the petitioner since according to them the decision of the Board of Councillors taken vide

resolution dated 4th December, 2019 is erroneous since the exercise which is required to be carried out in terms of Section 223(2) has not been complied with thereby denying opportunity to the private respondents to submit an undertaking for repairing the aforesaid building which could lead the Board of Councillors to pass a different order upon considering the feasibility of such proposal of repairing the premises in question.

In addition thereto, notice of this Court has been drawn to the application of the petitioner dated 23rd September, 2019 which is at page 12 of the writ petition wherein the petitioner herself has admitted that the private respondents are the tenants of the premises in question.

Having considered the submissions made on behalf of the parties and on perusal of the materials available on record, this Court first is required to scrutinize the validity of the decision taken by the Board of Councillors on 4th December, 2019 before finding whether it is appropriate to give direction upon the petitioner or the concerned authority of the Municipality to demolish the aforesaid premises in terms of the direction as contained in the decision of the Municipality taken under Section 223 of the said Act of 1993.

Admittedly, the decision of the Board of Councillors dated 4th December, 2019 was passed pursuant to the statutory provisions as contained in Section 223 of the said Act of 1993. For better understanding of the issue involved in this writ petition this Court finds it apt to quote Section 223 below:

“223. Power to order demolition of buildings, dangerous, ruinous or unfit for human habitation.- (1)Where the Board of Councillors, upon any information in its possession, is satisfied that any building is unfit for human habitation and is not capable, at a reasonable expense, of being rendered fit, it shall serve upon the owner of the building and upon any other person having an interest in the building, whether as lessee, mortgagee or otherwise, a notice to show cause within such time as may be specified in the notice as to why an order of demolition of the building should not be made.

(2)If any of the persons upon whom a notice has been served under sub-section (1) appears, in pursuance thereof, before the Board of Councillors and gives an undertaking that such person shall, within a period specified by the Board of Councillors, execute such work of improvement in relation to

the building as will, in the opinion of the Board of Councillors, render the building fit for human habitation or that the building shall not be used for human habitation until the Board of Councillors, on being satisfied that it has been rendered fit for human habitation, cancels the undertaking, the Board of Councillors shall not make an order of demolition of the building.

(3)If no such undertaking as is referred to in sub-section (2) is given or if, in a case where any such undertaking has been given, any work of improvement to which the undertaking relates is not carried out within the specified period or the building is used in contravention of the terms of the undertaking, the Board of Councillors shall forthwith make an order of demolition of the building requiring that the building shall be vacated within such period, not being less than sixty days from the date of the order, as may be specified in the order, and demolished within ninety days after the expiration of that period.

(4)Where an order of demolition of a building under this section has been made, the owner of the building or any other person having an interest therein shall demolish the building within the period specified in the order,

and if the building is not demolished within such period, the Board of Councillors shall demolish the building and sell the materials thereof.

(5) Any expenses incurred by the Board of Councillors under sub-section (4), which cannot be met out of the proceeds of sale of materials of the building, shall be recovered from the owner of the building or any other person having an interest therein as an arrear of tax under this Act.

(6) In determining, for the purposes of this section, whether a building is unfit for human habitation, regard shall be had to its condition in respect of the following matters, that is to say,-

(a) repair;

(b) stability;

(c) freedom from damp;

(d) natural light and air;

(e) water supply;

(f) drainage and sanitary conveniences;

(g) facilities for storage, preparation and cooking of food and for the disposal of rubbish, filth and other polluted matter; and the building shall be deemed to be unfit as aforesaid if it

is so defective in one or more of the matters as aforesaid that it is not reasonably suitable for occupation in that condition

(7)For the purposes of this section, "work of improvement" in relation to a building shall include any one or more of the following works, namely-

(a) necessary repairs;

(b) structural alterations;

(c) provision of light points and water taps;

(d) construction of drains, open or covered;

(e) provision of latrines and urinals;

(f) provision of additional or improved fixtures and fittings;

(g) opening up or paving of courtyard;

(h) removal of rubbish, filth and other polluted and obnoxious matter;

(i) any other work, including the demolition of any building or any part thereof, which, in the opinion of the Board of Councillors, is necessary for executing any of the works specified in clauses (a) to (h)".

On reading of specially sub-section (1), sub-section (2) and sub-section (7) of Section 223 it further appears that private respondents are required to be given opportunity of making deliberation before the Board of Councillors before taking final decision.

In view of the contemplation made under sub-section (1) of Section 223 wherein it has been amply provided that right to make deliberation before the Board of Councillors is not confined to only lessee, mortgagee but the expression which has been used "otherwise" has a wider connotation.

In addition thereto, there is an admission on the part of the petitioner in her application dated 23rd September, 2019 that the private respondents are the tenants of the aforesaid premises. In view of the provision as contained under Section 223(1) read with the application of the petitioner dated 23rd September, 2019 private respondents are required to be granted opportunity to participate in the proceedings which is to be drawn up in terms of Section 223 which has not been done in the present case.

Section 223 does not only postulates that in the event the building is found to be dilapidated and uninhabitable the only option which has been

left open to the concerned authority of the Municipality is not to pass a demolition order but based on undertaking to be furnished by the interested parties under sub-section (2) of Section 223, the other avenues of repairing the building in question needs to be explored that has also not been done in the present case.

Accordingly, the order dated 20th December, 2019 stands set aside.

The Board of Councillors of the said Municipality is directed to revisit the issue afresh after granting opportunity of making deliberation to the petitioner as well as the private respondents who are the occupants/tenants of the aforesaid premises.

While considering the submissions to be made on behalf of the parties the Board of Councillors shall explore the possibility of repairing the aforesaid building in the event any undertaking is furnished by any of the parties in this regard taking note of the factors which have been delineated under sub-section (7) of Section 223. In the event the Board of Councillors finds that it is impossible to make the premises habitable upon repairing the same the other avenues of demolishing the building should be considered.

The aforesaid exercise shall be carried out by the Board of Councillors of the said Municipality within a period of sixteen weeks from the date of communication of this order with appropriate notice to be served upon the petitioner and the private respondents.

With the aforesaid observations and directions the writ petition stands disposed of.

However, there shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties on the usual undertakings.

(Saugata Bhattacharyya, J.)