

Court No. 2
14.8.2024
(Item No. 10)
(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 13039 of 2024

Binod Kumar Shaw and Ors.
VS
Budge Budge Municipality & Ors.

Mr. Alok Kumar Ghosh
Ms. Chhabi Chakraborty
.... For the petitioners
Mr. Shiv Shankar Banerjee
Md. Hafiz Ali
.... For respondent Nos. 1 to 4.
Mr. Soumya Nag
Mr. Aditya Tiwari
Mr. Karan Prasad
.... For respondent Nos. 5

Upon urgency being pleaded on behalf of the petitioner and in view of the determination being assigned before this Court, this writ petition has been taken up for consideration by publishing the same in today's cause list.

Affidavit of service filed in Court today, is taken on record.

On the prayer of the learned counsel for the petitioners, leave is granted to the petitioners to file a supplementary affidavit to disclose a material document which will have a serious bearing in this writ petition. Such leave is granted. The supplementary affidavit affirmed on July 16, 2024 is taken on record.

Mr. Alok Kumar Ghosh, learned counsel appears for the petitioners.

Mr. Shiv Shankar Banerjee, learned counsel appears for Budge Budge Municipality.

Mr. Aditya Tiwari, learned counsel appears for private respondent No. 5, the owner of the premises.

The petitioners claimed to be the shop keepers who have their shops in the ground floor of the subject premises at Budge Budge. The petitioners are six in numbers with their respective six shop rooms situated at the ground floor of the premises. Smt. Sunita Gupta and Smt. Nilam Gupta are the present owners of the premises. The Municipality served a notice dated **February 3, 2023, annexure P-4** at **page 37** to the writ petition under **Section 223** read with **Section 327** of the **West Bengal Municipal Act, 1993 (for short, the Municipal Act)** read with the relevant Rules framed there under. The notice was addressed to the present owners of the premises and copy was endorsed to the other occupiers of the premises including these petitioners. Since no step was taken at the end of the owner of the premises or at the end of the petitioners, the Municipality issued and pasted a further notice dated **March 30, 2024** at the premises, **annexure P-5** at **page 38** to the writ petition declaring the premises to be a **“Dangerous Building”**. The Municipality further directed that, the premises shall have to be immediately vacated by its occupiers. The petitioners submitted its written objection dated **April 18, 2024, annexure P-6** at **page 39** to the writ petition before the Chairman of the Municipality.

Mr. Alok Kumar Ghosh, learned counsel appearing for the petitioners submits that, the objection has not been disposed of by the Municipality and the Municipality is proceeding in a hot hest for removal of the occupiers of the premises and resultantlly the demolition, if necessary. Mr. Ghosh submits that, the petitioners are only concerned with their six shop rooms at the ground floor. He submits that, the condition of such shop rooms are neither ruinous nor dangerous so that the Municipality shall request the petitioners to vacate the said shop rooms. He further submits that, in respect of the rest of the portion of the building including the first floor and above the petitioners have nothing to say if any action is taken by the Municipality in accordance with law. Mr. Ghosh further submits that, no inspection report as referred to in the said notice dated **February 3, 2023** was served upon the petitioners. To resists the action of the Municipality to have ground floor shop rooms vacated, the writ petitioners have filed the instant writ petition.

Mr. Soumya Nag, learned counsel along with Mr. Aditya Tiwari, learned counsel appearing for the private respondent No. 5, the present owner of the premises submits that, the entire premises is lying in a ruinous and dilapidated condition. His client supports the steps taken by the Municipality otherwise liability may be foisted upon the owner, in law.

Mr. Shiv Shankar Banerjee, learned counsel appearing for the Budge Budge Municipality submits that, the step taken by the Municipality so far since issuing the said notice dated **February 03, 2023** and the said notice dated **March 30, 2024** are strictly in accordance with law after carrying out the necessary inspection by the expert on **January 17, 2023**, the appropriate jurisdictional authority of the Municipality after applying its mind recorded its satisfaction and issued the said notice dated **February 3, 2023**. The experts opined that, the premises is lying ruinous and in a dangerous state in terms of **Sub-Section 6 to Section 223** of the said Municipality Act. He submits that, there is no further requirement of any assessment with regard to the structural stability of the building as the building has been held to be totally unstable by the experts. He further submits that, the petitioners have not produced any structural stability certificate before this Court or before the Municipal Authority in accordance with law on the basis where of it can be opined that, the building is stable.

After considering the rival contentions of the parties and upon perusal of the materials on record, at the outset, it appears to this Court that, neither the petitioners nor the owners of the premises have challenged the said notice dated **February 3, 2023** and this writ petition was filed in the month of **May, 2024**, which was about more than one year after the

said notice. The petitioners are running their livelihood from their six shop rooms situated at the ground of the premises. A civil suit is pending between the owners of the premises and the petitioners, as this Court has been informed by the learned counsel appearing for the petitioners as also the learned counsel for the owners of the premises. The Civil Suit has got nothing to do with the action taken by the Municipality in exercise of their power under the relevant law. Through this writ petition the petitioners have challenged the alleged action of the Municipality in exercise of their power under **Section 223 and 227 of the Municipal Act**. The Municipality also could not show from record that the previous inspection report dated **January 17, 2023** was served upon the petitioners or the inspection was held in their presence.

In view of the above, to sub-serve justice, the respondent No. 4 by taking assistance of the expert of the concerned Municipality shall cause a further inspection of the premises in presence of the petitioners and the respondent Nos. 5 and 6. By consent of the parties such inspection shall be held on **August 19, 2024 at 12.00 noon**.

Copies of the previous inspection report dated **January 17, 2023** along with current inspection report shall be then provided to the petitioners and the private respondent Nos. 5 and 6, who shall collect

copies of those inspection reports from the office of the respondent No. 4 positively by **August 20, 2024**.

In the meantime the petitioners shall be at liberty to cause an inspection through their Engineer Surveyor and shall obtain a report with regard to the structural stability of the entire premises.

After obtaining the said report the petitioners shall submit the same to the respondent No. 4 positively on or before **August 22, 2024**.

The respondent No. 4 then shall provide an opportunity of hearing to the petitioners and the respondent Nos. 5 and 6 on the basis of the said notice dated **February 3, 2023, annexure P-4 at page 37** to the writ petition with reference to the objection of the petitioners dated **April 18, 2024, annexure P-6 at page 39** to the writ petition and then shall pass its reasoned order in accordance with law.

By consent of the parties such hearing shall take place before the respondent No. 4 on **August 27, 2024 at 12.00 noon** at the office of the respondent No. 4.

The reasoned order then shall be communicated to the petitioners and the respondent Nos. 5 and 6 positively by **August 29, 2024**.

Since affidavits are not called for, the allegations made in this writ petition are deemed not to have been admitted by the respondents.

The directions made above are peremptory.

It is further made clear that, this Court has not gone into the merits of the writ petition.

Considering the urgency and the direction mentioned herein, the learned counsel for the parties shall communicate gist of this order to their respective clients to enable their clients to take steps to carry out the directions made in this order.

With the above observations and directions this writ petition **W.P.A. 13039 of 2024** stands disposed of, without any order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)