

20.06.2024
Sl. No.03
Suman
Ct.No.15

WPA 15208 of 2024

Saibal Chakraborty
Vs.
The State of West Bengal and Ors.

Mr. Partha Sarathi Bhattacharya, Sr. Adv.
Mr. Puranjan Pal
..for the petitioner

Mr. Subir Sanyal
Mr. Ratul Biswas
Mr. Sourojit Mukherjee
..for private respondents

Mr. Dipanjan Dutta
Mr. Soumen Chatterjee
..for the State

Mr. Chittapriya Ghosh
..for Suri Municipality

Facts involved in the case will be apparent from the judgment and order dated April 22, 2024 passed in MAT 637 of 2024 (Gouri Chakraborty-Vs- The State of West Bengal).

It appears that the relevant property under Suri Municipality, Birbhum was partitioned in terms of a decree passed in Title Suit No.56 of 1950 (Partition) by a competent Court. The western portion of the property was allotted to Hena Chakraborty and eastern portion of the property was allotted to Gouri Chakraborty and others. Hena Chakraborty wanted to demolish her portion of the property and construct a new building.

She approached Suri Municipality with an application dated February 22, 2020. By an order dated March 11, 2020, the Municipality permitted Hena to demolish western portion of the property and to erect a new building. Gouri and others were aggrieved by the aforesaid order. It was their apprehension that Hena's portion could not be demolished without demolishing the eastern portion belonging to Gouri and others. Therefore, Gouri made a representation to the Chairperson of the Municipality on September 21, 2020. The order dated March 11, 2020 permitting Hena to demolish her portion of the property was challenged by Gouri and others by filing a writ petition being W.P.A. 8241 of 2020. During the pendency of the said writ petition, by an order dated December 2, 2020, the Chairperson withdrew her order dated March 11, 2020 by which permission was granted to demolish Hena's portion and to construct afresh. The order dated December 2, 2020, withdrawing the order dated March 11, 2020 was challenged by Hena in another writ petition being WPA 9804 of 2021. In course of hearing, the learned Single Judge called for opinion from Suri Municipality as regards the feasibility of demolition of the western portion of the property without adversely affecting the eastern portion. A report was filed, which was challenged by Gouri by filing another writ petition being WPA

No.5286 of 2022. All the three writ petitions were taken up together for hearing by a learned Single Judge. By an order dated August 29, 2023, the learned Judge expressed the opinion that neither the order dated March 11, 2020 nor the order dated December 2, 2020 passed by the Chairperson of the municipality were based on any expert report. Learned Judge by the said order dated August 29, 2023, appointed a Chartered Engineer empanelled with this Court to cause an inspection of the property in question upon notice to the learned advocates for the parties and to submit a comprehensive report before him. The three writ petitions were taken up for final hearing by the learned Judge on March 8, 2024, when the learned Judge considered the report filed by the Chartered Engineer. The said report has two parts. Part-A is described as Plan-A, which pertains to the feasibility of repairing the western portion of the property for making it fit for human habitation. The second part of the report is described as Plan-B relating to the feasibility of demolishing the western portion of the property in question without adversely affecting the structural stability of the eastern portion of the property. The learned Judge was pleased to discard Part-A of the report on the ground of going beyond the order passed by him. The learned Judge, however, was satisfied that the Plan-B was a workable

procedure for demolition of the western portion of the building. The learned Judge directed the Municipality to take a decision with regard to Hena's prayer for demolition of her portion of the property in the light of Plan-B as contained in the report of the Chartered Engineer.

The order of the learned Judge was carried in appeal being MAT 637 of 2024 filed by Gouri and others.

The Appeal Court disposed of the appeal with a direction that the report of the Chartered Engineer filed before the learned Single Judge would in no manner be binding on the Municipality while considering Hena's request for granting permission to demolish her portion of the building in question. The report of the Chartered Engineer would be only a piece of material that the Municipality would consider. The Municipality would be at liberty to attach such weight to the report as it may deem appropriate.

Following the order of the Division Bench, the Municipality by an order dated May 18, 2024 resolved as follows:-

"1. The complete demolition work will be controlled and supervised by an experienced Senior Engineer and at that time the Plan B of the report of Chartered Engineer submitted in High Court to be considered. In this regard Suri Municipality will proceed to receive help of the Executive Engineer, M.E.D.T.E. Birbhum and Mrs. Hena

Chakraborty and Mou Chakraborty will be bound to bear the cost/expenses of this supervisory work by the Experienced and Senior Engineer.

2. The demolition of her portion of the property should be done in such a way without adversely affecting the structural stability of the eastern portion even to a little extent, taking into consideration the workable procedure and method as mentioned in Part B of the report of the Chartered Engineer submitted in the High Court.

3. If there occurs any loss/damage in the eastern part of the property, Mrs. Hena Chakraborty and Mou Chakraborty will be totally bound to compensate the loss to the other owners of the property. The amount of compensation will be determined by the expert valuer, Engineer.

4. Hena Chakraborty and Mou Chakraborty will have to submit a duly signed written declaration accepting the above noted conditions, to the municipal Authority, before starting of the demolition work.

Further it resolved that Chairman is Authorised for the purpose.

The copy of the report and findings of the Municipal Authority is enclosed in Annexure A with this proceedings.

Let a copy of this proceedings be sent to the Co-owners of the building (Holding no.167/202 of ward no.08.)”

Said resolution of the municipality dated May 18, 2024 has been challenged by the successor of Gouri by filing this writ petition.

Mr. Partha Sarathi Bhattacharya, learned advocate appearing for the petitioner submits that no proper safeguard has been prescribed by the Municipality in carrying out the proposed demolition work. He submits that the resolution of the Municipality does not indicate as to how the

structural stability of the portion allotted to the petitioner is to be secured. Therefore, the resolution should set aside.

I am of the view that the report of the Chartered Engineer provides adequate safeguards to ensure the structural stability of the portion allotted to the writ petitioner. The Municipality has also prescribed for some additional measures to ensure the interest of the petitioner. Therefore, I am of the view that the resolution of the Municipality should not be interfered with. Respondent nos. 14 and 15 should be permitted to demolish their portion in terms of the Part-B of the report filed by the Chartered Engineer and in terms of the resolution adopted by the Municipality. However, as an additional measure, I direct respondent nos. 14 and 15 to secure a sum of Rs.15,00000/- (Rupees Fifteen Lakhs only) with the Municipality.

In the event, the portion allotted to the petitioner suffers any damage during the demolition work, the same shall be repaired from the fund secured by respondent nos. 14 and 15. If there is no need to repair or other related work, the deposited money shall be refunded to respondent nos. 14 and 15. Respondent nos. 14 and 15 must secure the amount within a period of two weeks from the date of communication of this order.

Furthermore, respondent nos.14 and 15 shall file an undertaking to the Municipality to adequately compensate the petitioner if the proposed demolition work causes major damage that cannot be repaired. The amount of compensation shall be assessed by the Municipality.

Needless to mention that respondent nos. 14 and 15 will be permitted to carry out the demolition work only after deposit of Rs.15,00000/- (Rupees Fifteen Lakhs only) with the Municipality in terms of this order.

Accordingly, **WPA 15208 of 2024** is disposed of.

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

(Kausik Chanda, J.)