

S/L 2
26.09.2024
Court. No. 551
Suvayan

WPA 16673 of 2024
Dipankar Saha & Anr.
Vs.
The State of West Bengal & Ors.

Ms. Sananda Bhattacharyya

...for the petitioners.

Mr. Achintya Kr. Banerjee

Ms. Indumouli Baenerjee

...for the Ranaghat Municipality.

1. By filing the instant writ petition the writ petitioner have prayed for issuance of appropriate writ for quashing the memo no. 433/BoC/R.M dated 15.05.2024 whereby and whereunder the writ petitioner no. 1 was served with a notice under Section 223 of the West Bengal Municipal Act, 1993 (hereinafter referred to as the 'said Act') asking the writ petitioner no. 1 to demolish the premises under holding nos. 24 and 24/1, Subhas Avenue, Ward no. 4, Ranaghat Municipality.

2. Drawing attention to page no. 65 being a copy of the said notice dated 15.05.2024 it is submitted on behalf of the writ petitioners that such notice was served by the Chairman of the Ranaghat Municipality and not by the Board of Councilors as per legislative mandate as provided in Section 223 of the said Act.

3. It is further submitted on behalf of the writ petitioners that no notice was served upon the writ petitioner no. 2 though the writ petitioner no. 2 is also a co-owner of the aforesaid holding which is evident from page no. 44 being a photocopy of the deed of conveyance in respect of the aforementioned holding.

4. In course of his submission learned Advocate for the respondent Municipality has handed over a copy of bunch of papers containing the photocopy of the notice under challenge dated 15.05.2024, a mass petition dated 29.02.2024 as received by the Chairman, Ranaghat Municipality, a photocopy of the enquiry report dated 29.02.2024, a photocopy of the notice dated 09.03.2024 issued by the Chairman, Ranaghat Municipality addressed to the writ petitioner no. 1 and the photocopy of the extract of resolution of the meeting of Board of Councilors of Ranaghat Municipality held on 29.02.2024.

5. It is submitted by Mr. Banerjee, learned Advocate for the respondent Municipality that it is not correct to say that the impugned notice dated 15.05.2024 was served by the Chairman of the said Municipality unilaterally rather under cover of the said notice the decision of the Board of Councilors has been communicated to the writ petitioner no. 1 which is reflected from the copy of the resolution dated 29.02.2024. It is further submitted by Mr. Banerjee that the impugned notice under Section 223 of the said Act was served pursuant to the inspection report as well as pursuant to the decision of the Board of Councilors as required to be taken under Section 223 of the said Act.

6. After careful consideration of the entire materials as placed before this Court it reveals to this Court that on behalf of the Ranaghat Municipality sufficient documents have been placed to justify their action which has been

communicated under cover of their letter dated 15.05.2024. However, as rightly submitted by learned Advocate for the writ petitioners that though the writ petitioner no. 2 is a co-owner of the aforementioned holding she has every right to get a notice from the respondents Municipality more specifically from the Board of Councilors before initiating a proceeding under Section 223 of the said Act.

7. Such contention has been opposed by Mr. Banerjee, learned Advocate for the Municipality. It has been stated by him that non-service of notice upon the respondent no. 2 does not invalidate the action of the Board of Councilors which is under challenge in this writ petition.

8. At this juncture, I propose to look to the provision of Section 223 of the said Act of 1993 which is quoted hereinbelow in verbatim:

“223. Power to order demolition of buildings, dangerous, ruinous or unfit for human habitation:- (1) *Where the Board of Councilors, 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 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*

Councilors and gives an undertaking that such person shall, within a period specified by the Board of Councilors, execute such work of improvement in relation to the building as will, in the opinion of the Board of Councilors, render the building fit for human habitation or that the building shall not be used for human habitation until the Board of Councilors, on being satisfied that it has been rendered fit for human habitation, cancels the undertaking, the Board of Councilors 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 Councilors 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 Councilors shall demolish the building and sell the materials thereof.

(5)

(6)

(7) ”

9. On perusal of the aforementioned legislative provision it thus reveals this Court that before proceeding under Section 223 of the said Act of 1993 it is obligatory on the part of the Board of Councilors to serve notice upon the owner of the building and/or upon any other person having an interest in the building whether as lessee, mortgagee or otherwise.

10. It is trite law that when an authority is proceeding in accordance with law the said authority is duty bound to comply with each and every provision of the said law as otherwise the said action of the authority would become invalid.

11. Sufficient materials have been placed before this Court that in respect of the aforementioned two holdings the writ petitioner no. 2 is the co-owner of one of the building. Sufficient materials have been also placed before this Court that though notice under Section 223 (1) of the said Act of 1993 was served upon writ petitioner no. 1 but similar such notice was not served upon the writ petitioner no. 2 which is mandatorily to be done as per provision under Section 223 (1) of the said Act of 1993.

12. In view of the aforementioned facts and circumstances, this Court considers that the entire proceeding under Section 223 (1) as initiated by the Board of Councilors of Ranaghat Municipality in respect of the aforementioned two holdings is vitiated and accordingly the said proceeding as well as the notice dated 15.05.2024 are hereby quashed.

13. Before parting with liberty is given to the respondent no. 7, i.e., the Board of Councilors, Ranaghat Municipality to initiate a fresh proceeding under Section 223 of the said Act after service of due notice upon the writ petitioners and/or upon any other person having an interest in the said two holdings.

14. It is further made clear that the disposal of the instant writ petition does not debar the respondent no. 7 or the respondent no. 8 to initiate any other legal action as per provision of the said Act, 1993 against the present writ petitioners in respect of the aforementioned two holdings in accordance with law.

15. Since no affidavits have been used on behalf of the respondents Municipality and its officials all allegations as made by the writ petitioners in the instant writ petition are deemed to have been not admitted.

16. With the aforementioned observations, the instant writ petition being **WPA 16673 of 2024** is hereby disposed of.

17. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Partha Sarathi Sen, J.)