

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Partha Sarathi Sen

WPA 17131 of 2024

**Smt. Sushila Rani Paul & Ors.
Vs.
The State of West Bengal & Ors.**

For the petitioners : Mr. Prosenjit Mukherjee
Ms. Sima Ghosh
Mr. Jahangir Hossain

For Bidhannagar Municipal Corporation : Mr. Sirsannya Bandopadhyay
Mr. Arka Kumar Nag
Mr. Tirthankar Dey

For the State : Mr. Priyankar Saha
Ms. Srijani Mukherjee

Heard on : 03.10.2024

Judgement on : 03.10.2024

PARTHA SARATHI SEN, J.:

1. By filing the instant writ petition, the writ petitioner has impugned the reasoned order dated May 30, 2024 as passed by the Commissioner, Bidhannagar Municipal Corporation/respondent no. 3 herein.
2. In course of hearing, learned advocate for the writ petitioners submits before this Court that challenging the order of the respondent no. 3, an

appeal shall lie before the Municipal Building Tribunal, however, since such Building Tribunal has not yet been constituted, the instant writ petition has been filed which is, however, not disputed on behalf of the respondents/authorities.

3. It is submitted on behalf of the writ petitioner further that while passing the impugned reasoned order, the respondent no. 3 did not consider the material documents as placed before him on behalf of the writ petitioner and, therefore, the impugned reasoned order suffers from material illegality and/or irregularity. It is further submitted that the respondent no. 3 has failed to visualize that in respect of the building at DC-2, Chawlpatty, Narayantala (W), Kolkata – 700 059, the respondent no. 3/authority has failed to consider that the said structure comprises of two parts namely; one is old structure and another is new structure.
4. It is further submitted that respondent no. 3/authority has also failed to consider that when the old structure of the aforesaid building was constructed, that has been constructed in accordance with the prevalent Building Rules of the Panchayat since the premises-in-question was previously situated within Panchayat area which was subsequently merged in the municipal area and again subsequently merged within the area of Bidhannagar Municipal Corporation. It is thus submitted that the finding of the respondent no. 3 as communicated under cover of its letter dated May 30, 2024 is irrational and the same may be quashed.
5. Learned advocate for the respondents/authorities submits before this Court that being a writ Court, this Court is not expected to reassess the

factual aspects. It is further submitted that the aforementioned reasoned order has been passed after giving due opportunity of hearing to the present writ petitioner and, therefore, by no stretch of imagination, it can be said that principle of natural justice has not been followed by the respondent no. 3 while passing the impugned order.

6. Before coming to a logical conclusion, some portions of the reasoned order is required to be looked into and those are quoted below in verbatim:

“DECISION WITH REASONS:

After taking into consideration of all submissions made by all concerned parties and in the light of the legal provisions, it appears as follows:-

- (1)
- (2)
- (3) *The observation as per the Physical Inspection Report dated 16.09.2021 as conducted by the BMC officials at the said premises are as hereunder:*
 - (i) *The back portion of the building at DC-2, Chaulpatty, Narayantala(W), Kolkata 700059 is an old structure. Front portion comprises of an incomplete construction of a single stories column and slab structure without any brick work.*
 - (ii) *The gap between the buildings of petitioner and respondent is very small (approx 1.5 feet) as both the buildings encroached the mandatory open spaces.*
 - (iii) *During inspection Sri Gopal Paul, the respondent, produced an old sanctioned building plan in which the alleged construction is shown.*
 - (iv) *To access the deviation, sanctioned building plan from petitioner was also required, which was not shown during inspection.*

- (4) The observation as per the Physical Inspection Report dated 05.09.2023 as conducted by the BMC officials as the said premises are as hereunder:*
- i. The back portion of the building at DC-2, Chaulpatty, Narayantala(W), Kolkata 700059 is an old structure. But in the front portion a new incomplete single storied construction has been constructed comprising of RCC column and slab structure without any brick work. No valid sanctioned plan found for this construction.*
 - ii. The gap between the adjacent buildings of Mrs. Saroj Saraf & others (DC-1/1) is very small (approx 1.5 feet) as both the buildings encroached the mandatory and respondent is very small (approx 1.5 feet) as both the buildings encroached the mandatory open spaces.*
 - iii. During inspection Mrs. Saroj Saraf produced an old building plan which seems to be not approved by competent authority. Moreover, the said building is constructed beyond the produced building plan.*
- (5) That the plan so produced by the private respondent with endorsement on the backside of the plan stamped as "SANCTIONED" was apparently signed by Chairman/Vice Chairman, Rajarhat Gopalpur Municipality dated 13.02.1997.*
- (6) That the plan so submitted is already expired by 13.02.2002 as per the West Bengal Municipal (Building) Rules, 2007.*
- (7) That it also appears that erection of structure/building without any sanctioned building plan and without prior permission from the Corporation is a gross violation of the provisions of the West Bengal Municipal Corporation Act, 2006.*

*ORDER IN RESPECT OF PREMISES NO. DC-2,
CHAWLPATTY, NARAYANTALA (W), P.O. –
DESHBANDHUNAGAR, P.S. BAGUIATI, KOLKATA –
700059*

Under the facts and circumstances, the undersigned as per section 266 of the West Bengal Municipal Corporation Act, 2006, directs the private respondent Nos. 6 to 9 and or owners of DC-2, Chawlpatty, Narayantala (W), P.O. Deshbandhunagar, P.S. Baguiati, Kolkata 700059 to demolish the unauthorized constructions erected by them 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 unauthorized constructions and recover the expenses of such demolition from the private respondent(s) as per the provisions of West Bengal Municipal Corporation Act, 2006.”

7. After careful consideration of the entire materials as placed before this Court and after hearing the learned advocates for the contending parties, it appears to this Court that though it is the grievance of the writ petitioner that the respondent no. 3/authority did not consider that the building-in-question comprises of an old structure and the new structure, but from the reasoned order which is under challenge before this Court, it would reveal that in course of inspection, it has been noticed by the respondents/authorities that in the front portion of the premises no. DC-2, Chawlpatty, Narayantala (W), Kolkata – 700 059, a new incomplete single storied construction has been erected comprising of R.C.C. column and slab structure without any brick work and for which no sanctioned plan

was obtained. The said authority further noticed that the statutory side space has also not been maintained while raising the new structure.

8. As rightly pointed out by the learned advocate for the respondents/authorities that this Court being a writ Court, is not supposed to enter into the domain of the executive authority. Being a writ Court, this Court is duty bound to see as to whether there is any illegality of irregularity on the part of the respondent no. 3 in its decision making process. This Court is also duty bound to see as to whether the principle of natural justice has been followed or not prior to and/or while passing the reasoned order dated May 30, 2024.
9. On close scrutiny of the reasoned order dated May 30, 2024, it appears to this Court that several opportunities have been given to the present writ petitioner to justify his action with regard to the alleged illegal construction and, therefore, by no stretch of imagination, it can be said that principle of natural justice has been violated at the instance of the respondents/authorities.
10. It further appears to this Court that while passing the reasoned order, the respondent no. 3/authority was not persuaded by any extraneous material which is not on record. On the contrary, it appears that he comes to a logical conclusion on the basis of the materials as placed before him.
11. In view of the discussion, this Court thus finds no reason to interfere with the impugned reasoned order dated May 30, 2024.
12. Accordingly, the instant writ petition being **WPA 17131 of 2024** is dismissed.

13. There shall be, however, no order as to costs.
14. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

Sourav
A.R. (Court)

(Partha Sarathi Sen, J.)