

16.12.2024
Item Nos.4 & 5
KS
Ct. No.7

W. P.A. No.5580 of 2016
Ram Sevak Chowbey
Versus
Hooghly Chinsurah Municipality & Ors.
With
W. P.A. 13605 of 2009
Estate of Sri Sri Raghunath Jew Thakur & Anr.
Versus
The State of West Bengal & Ors.

Mr. Sukumar Bhattacharya
Ms. Piyali Shaw
Mr. Puja Sonkar
Ms. Oindrilla Chatterjee
.....For the Petitioners
in **W. P.A. 13605 of 2009**
.....For the Respondents
in **W.P.A. 5580 of 2016**
Ms. Madhumita Patra
..... For the Petitioner
in **W.P.A. 5580 of 2016**
Mr. Tapas Kumar Ghosh
Mr. Tanmoy Chowdhury
.....For the Respondent Nos.1 to 3
in **W. P.A. No.5580 of 2016**
Mr. Tapas Kumar Ghosh
Mr. Tanmoy Chowdhury
.....For the Respondent Nos.2 to 3
in **W.P.A. No.13605 of 2009**

1. The petitioners in W.P.A. 13605 of 2009 (in short, WP-1) have prayed for setting aside the order dated July 24, 2009 passed by the Chairman, Hooghly –Chinsurah Municipality. By the said order, the petitioners in W.P.-1 were directed to demolish the illegal construction in the holding numbers, specified in the said order within the time limit, as stipulated therein.

2. The petitioner in W.P.A. 5580 of 2016 (in short, WP-2) has prayed for issuance of a Writ of Mandamus commanding the respondent/Municipality to demolish the illegal construction of the building comprised in five holding numbers in Rajbati Mahalla within Ward No.19 of the Hooghly-Chinsurah Municipality.
3. After perusing the reliefs claimed in the aforesaid writ petitions, this Court finds that the petitioner in W.P.-2 is in effect praying for implementation of the order of demolition passed by the Municipality, which is under challenge in W.P.-1. In view thereof, the aforesaid writ petitions are heard analogously.
4. Mr. Bhattacharya, learned advocate appearing for the petitioner in W.P. – 1 submits that a Co-ordinate Bench in W.P.A. 5189 of 2008 directed the Board of Councillors of the Municipality to take a decision in accordance with Section 218 of the West Bengal Municipal Act. He submits that the order passed by the Municipality on July 24, 2009 is not in accordance with the directions passed by this Hon'ble Court in the aforesaid writ petition.
5. Learned advocate appearing for the petitioner in W.P. – 2 submits that the petitioner in W.P. – 1 has made illegal construction in five holding numbers and the municipal authority even after coming to a finding that such construction is an illegal and unauthorized one, have not taken any steps to demolish the same.
6. Learned advocate appearing for the Hooghly –Chinsurah Municipality submits that after holding inspection, it was

found that there are unauthorized constructions in the aforesaid holdings and after giving an opportunity of hearing to the respective parties, the order of demolition was passed. He submits that the order of demolition was passed pursuant to the directions passed by this Hon'ble Court in the earlier writ petition.

7. In reply, Mr. Bhattacharya, learned advocate submits that no inspection was carried out in the presence of the petitioner. Copy of the report of the alleged inspection was also not supplied to the petitioner prior to the date of hearing.
8. Heard the learned advocates for the parties and perused the materials placed.
9. Section 218 of the West Bengal Municipal Act deals with order for demolition or alteration of building in certain cases. Section 218 empowers the Board of Councillors to make an order directing any erection, alteration, addition or projection of any building, which has been executed unlawfully to be demolished or altered after giving the owner of the building a reasonable opportunity of being heard.
10. The Co-ordinate Bench in ***W.P. No.5189 (W) of 2008*** in the case of ***Estate of Sri Sri Raghunath Jew Thakur & Anr. Vs. The State of West Bengal & Ors.*** passed a judgment and order on March 27, 2008. By the said order, the writ petition was disposed of by passing the following directions:-

“Involving the petitioners, the fourth respondent, and any other person who may be affected by the decision given in terms of this order, and after making investigation and inspection, the board of councilors of the municipality shall decide, within for weeks from the date of communication of this order, whether the complaint of the petitioners dated March 1, 2007 merits consideration for registering proceedings under s.218 of the West Bengal Municipal Act, 1993. The decision shall be a reasoned one and it shall be communicated to all concerned immediately. If it is found that the proceedings are to be initiated, then they shall be registered and thereupon appropriate reasoned decision in them shall be given by the board of councilors, within ten weeks from the date of registration, after giving the parties reasonable opportunity to present their cases and also to adduce evidence in support of their cases. The final decision given in the proceedings, if the proceedings are registered, shall be communicated to all concerned immediately, and if it is found that any unauthorized constructions have been made by anyone, then steps shall be taken for their demolition immediately. The chairman of the municipality will simultaneously examine the question of issuing stop-work notice, if necessary, in terms of the provisions of s.220 of the West Bengal Municipal Act, 1993. There shall be no order for costs.”

11. After going through the said order, this Court finds that the Co-ordinate Bench directed carrying out investigation and inspection and the Board of Councillors of the Municipality was directed to decide within the time limit specified thereunder as to whether the complaint of the petitioner dated March 1, 2007 merits consideration for registering proceedings under Section 218 of the West Bengal Municipal Act.
12. Record reveals that pursuant to the said order, the Chairman, Hooghly –Chinsurah Municipality heard the matter on 31st October, 2008 when Sri Ram Sevak Chowbey was present with the lawyers. The Chairman in the order dated 27th February, 2009 noted that fresh

inspection of the holdings referred to in the said order was done by the technical staff on two dates and as per the report of the said inspection, it was found that there are some illegal constructions on those buildings. In the order dated 27th February, 2009 it was recorded that the plan was sanctioned by Sri Manoj Agarwal by suppressing fact and/or misrepresenting facts before the Municipality. Accordingly, it was observed that all the new constructions on the basis of plan passed in the year 2000 is illegal and asked the owners and possessors of the holdings to demolish all new constructions within a specified time limit and if they failed to demolish the said construction, then the Municipality shall effect demolition. After passing the said order, the Chairman, Hooghly –Chinsurah Municipality placed the papers before the CIC and the Board of Councillors for taking a final decision.

13. It appears from the record that the decision of the Chairman, Hooghly –Chinsurah Municipality dated 27th February, 2009 was considered and approved in the CIC Meeting dated 18th June, 2009 and in the Board of Councillors Meeting on June 20, 2009. It appears from the endorsement made in the said order that the Board of Councillors directed issuance of a demolition order. Thereafter, the Chairman, Hooghly –Chinsurah Municipality passed an order dated July 24, 2009 directing the Manoj Kumar Chowbey to demolish the illegal construction in the holdings numbers, as

mentioned in the order dated July 24, 2009 within the time limit mentioned in the said order.

14. Under Section 218 of the 1993 Act, the Board of Councillors is obliged to give a reasonable opportunity of hearing to the owner of the offending building and thereafter, pass an order accordingly.
15. As observed hereinbefore, the Chairman, Hooghly – Chinsurah Municipality and not the Board of Councillors fixed a date of hearing and heard the petitioner in W.P.- 2 and passed an order, which was subsequently approved in the Meeting of the Board of Councillors.
16. Section 218 mandates that the Board of Councillors after giving the owner of the building a reasonable opportunity of hearing shall make an order. Therefore, the Board of Councillors have to take a decision. The statute does not contemplate approval of an order of the Chairman by the Board of Councillors. It is well-settled that a statutory authority has to act strictly as per the mandate of the statute.
17. The procedure adopted by the Hooghly –Chinsurah Municipality is not contemplated under Section 218 of the 1993 Act.
18. The Co-ordinate Bench in the judgment and order dated March 27, 2009 in W.P. 5189 (W) of 2008 also directed the Board of Councillors of the Municipality to take a decision whether the complaint dated March 1, 2008 merits consideration for registering the proceedings under Section 218 of the West Bengal Municipal Act, 1993.

19. For the reasons, as aforesaid, this Court holds that there is an infirmity in the decision making process for which the order impugned is liable to be set aside and quashed.
20. Though, the Chairman, Hooghly –Chinsurah Municipality in the order dated 27th February, 2009 referred to the inspection reports of the technical staff, but it does not appear from the said order that the copy of the inspection reports were supplied to the respective parties.
21. Mr. Bhattacharya, learned advocate would strenuously contend that such reports were not supplied to the petitioners in W.P. – 1.
22. This Court was minded to issue a direction upon the Municipality to supply copies of such reports to the respective parties. At this stage, the learned advocate appearing for the Municipality submits that the records in connection with the aforesaid demolition proceedings are not traceable and, therefore, the Municipality cannot supply copies of such reports to the respective parties.
23. In view thereof, this Court directs that immediately upon receipt of the server copy of this order the Municipality shall make a fresh inspection of the holdings in question after serving notices well in advance to the petitioners of the respective writ petitions as well as upon all interested parties, who are likely to be affected with the result of such inspection. Copies of the inspection reports shall be served upon the respective parties who are notified for the purpose of inspection. Thereafter, the Board of

Councillors shall take steps and act in accordance with the provisions of Section 218 of the 1993 Act and complete the entire exercise as expeditiously as possible, but positively within a period of eight weeks after the inspection is made.

24. For all the reasons, as aforesaid, the orders dated 24th July, 2009, 27th February, 2009, the decision taken in the CIC Meeting dated 18th June, 2009 and the decision taken in the Meeting of the Board of Councillors on June 20, 2009 are set aside and quashed. Since, the orders have been set aside, nothing remains to be decided in W.P. – 2.
25. It is, however, made clear that the observations made hereinbefore are only to support the ultimate conclusion and the same shall not prejudice the parties in future proceedings.
26. With the above observations and directions, writ petitions stand disposed of.
27. There shall be, however, no order as to costs.
28. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(HIRANMAY BHATTACHARYYA, J.)