

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Gaurang Kanth

***M.A.T. 1430 of 2024
with
CAN 1 of 2024***

***Saibal Chakraborty
-Vs-
The State of West Bengal & Ors.***

For the Appellant	:	Mr. Sarajit Sen, Adv., Mr. Aniket Mitra, Adv., Mr. Dipta Dipak Banerjee, Adv., Mr. Diwakar Pathak, Adv.
For the State	:	Mr. Dipanjan Dutta, Id. Sr. Govt. Adv., Mr. Soumen Banerjee, Adv.
For the Respondent Nos.12 & 13.	:	Mr. Subir Sanyal, Adv. Mr. Ratul Biswas, Adv., Ms. Soumyadipa Kanu, Adv., Mr. Sourojit Mukherjee, Adv.
For the Municipality	:	Mr. Chittapriya Ghosh, Adv., Ms. Priyanka Saha, Adv.
Heard on	:	29.07.2024, 08.08.2024 & 29.08.2024.
Judgment on	:	29.08.2024

Joymalya Bagchi, J. :-

1. Appeal is directed against order dated 20.06.2024 whereby the Hon'ble Single Judge permitted demolition of the western portion of the building which is standing on holding No.167/202 of Ward No.08 subject to respondent Nos.12 and 13 depositing Rs.15 lakhs as security for expenses that may be undertaken for repairs and upon furnishing undertaking that they shall adequately compensate the appellant, if the proposed demolition work causes damage that cannot be repaired.

2. Factual matrix giving rise to the appeal is as follows:-

3. A two storied building is standing on an undivided property belonging to the predecessors-in-interest of the appellant and the private respondents. In Title Suit No.46 of 1950 the property was partitioned by metes and bounds and the eastern portion of the property was allotted in favour of predecessors-in-interest of the appellant and recorded as holding No.167/202 while the western portion was allotted in favour of private respondent Nos.12 & 13 as holding No.168/203.

4. Private respondents No.12 & 13 prayed before the Suri Municipality that the western portion of the building standing on their property was in a dilapidated condition and sought permission to demolish it and reconstruct thereon. Such permission was granted by the Municipality vide order dated 11.03.2020. This came to be

challenged by the appellant/writ petitioner in an earlier proceeding being WPA 8241 of 2020. In the meantime, the Municipality by order dated 10.08.2021 recalled the permission which came to be challenged by the private respondents in WPA 9804 of 2021.

5. Both the writ petitions were heard analogously. By order dated 29.08.2023 the Hon'ble Single Judge directed a Chartered Engineer to submit comprehensive report whether the western portion of the building can be demolished without causing damage in respect of safety, security and structural stability of the eastern portion and safeguards, if any, which require to be taken in the matter.

6. Pursuant to the aforesaid direction, Chartered Engineer submitted a report. In the report, Engineer proposed two plans viz., plan 'A' and plan 'B'. In plan 'A', it was noted the western portion is not a dilapidated structure and by undertaking repairs the portion may be made habitable. Accordingly, it was suggested that the demolition of the western portion is not advisable as it may cause damage to the eastern wing and jeopardize safety and security of its habitants. Plan 'B' proceeded on the premise if the owners of the western portion are adamant to demolish the structure and undertake a new structure, the exercise has to be undertaken under the strict and constant supervision of a civil engineer having sufficient knowledge of demolition work subject to the following terms and conditions:-

i) Before starting demolition works, surrounding area should be covered with tarpaulin/nets & water sprinklers etc. to avoid chunks,

piece of brick falling here and there and dust to be washed so that neighbours do not face any inconvenience.

ii) In ceiling of eastern wing two bays from partition wall to wooden beams should be protected from falling damages of roof tiles resting in between beams and purlins as shown in 2 sketches S1 & S2. 2 inches thick wooden plank to be set between purlins and beams touching the tiles and the wooden planks are to be supported by 2 inches dia steel pipe resting firmly on floors at 3 feet or so apart. This will continue from main wall to main wall for the two bays. Horizontal bracing with 2 inches dia steel pipe must be clamped with vertical pipe at centre.

iii) The roof on western wing shall be cut by electrical cutter machine leaving about 3 feet space upto beam from partition wall. After roof is separated, the wall shall be dismantled by using chisels and hammer of standard size going upto bottom of foundations. In similar way floor should be cut by cutter machine and thereby western wing will be separated from eastern wing. In any case long handle hammer (locally known as Hamber) with good number of labours work at a time is strictly prohibited.

iv) After separating the 2 wings, Western wing may be demolished stage by stage very cautiously and carefully so that in any way impact of vibration of west wing do not affect the structure of Eastern wing.

v) All Municipal & Environmental norms for demolition works including proper safety, security of laborers must be strictly adhere to.

vi) Care should be taken to remove waste material from site at the earliest.

vii) Proper care should also be taken to control noise and dust pollution to remain within the permissible limit fixed by Pollution Control Board.

viii) Demolition work to be carried out in dry season avoiding cyclonic and stormy weather.

ix) Since the area i.e. whole of West Bengal falls under Seismic Zone IV, care must be taken so that slightest tremor should not cause any havoc.

x) Peace and harmony of the neighbours must be maintained throughout the operation of demolition.

xi) Last but not the least, whole operation of demolition West wing as well as safeguarding of ceiling of East wing must be carried out under constant strict supervision of senior Civil Engineer, having sufficient experience in demolition work.

xii) Local Municipal Authority should pay frequent visit to monitor the demolition of West wing and safeguarding works of East wing are being executed as narrated above.

7. Plan 'A' did not find favour with the Hon'ble Single Judge and the Municipality was directed to proceed to consider the prayer of the

private respondents for demolition in light of the observations made in the report of the Chartered Engineer after giving an opportunity of hearing to the parties. The order was carried in appeal and an Hon'ble Co-ordinate Bench of this Court by order dated 22.04.2024 while affirming the order of the Hon'ble Single Judge clarified that the report of the Chartered Engineer shall not be treated as binding on the Municipality and the Municipality would be at liberty to take an independent decision and attach such weight to the report as it may deem fit and proper. The Bench further observed the Municipality will finally decide whether or not western portion of the property in question can be demolished for the purpose of a new erection without damaging in any manner of the eastern portion of the property.

8. In terms of the aforesaid direction, the Board of Councillors by resolution dated 18.05.2024, inter alia, held 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.DTE 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. Mrs. 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).”

9. The aforesaid resolution is the subject matter of challenge in the present writ petition at the behest of the appellant-owner of the eastern portion of the building. Before the Hon’ble Single Judge, appellant contended the resolution passed by the Municipality is not a reasoned one and does not address the relevant issues involving structural stability of the eastern portion. Nor does it provide adequate safeguards with regard to its use and enjoyment while demolition is undertaken. Unimpressed by such submission, the Hon’ble Single Judge in the impugned order held adequate safeguards to ensure structural stability were provided in the report of the Chartered Engineer and the Municipality had also prescribed additional measures to protect the interest of the appellant.

10. Accordingly, the Hon’ble Single Judge disposed of the writ petition, inter alia, directing deposit of Rs.15 lakhs with the Municipality which may be utilized for repairs, if damage is caused to the eastern portion of the building during demolition work. Private respondents were also directed to submit undertaking that they shall adequately compensate the appellant/writ petitioner if the demolition work caused major damage which cannot be repaired.

11. Mr. Sarajit Sen with Mr. Aniket Mitra for the appellant contend the foundation of the proceeding was on the strength of Section 223 of the West Bengal Municipal Act, 1993 (hereinafter referred to as Act of 1993) once the Chartered Engineer in his report noted that the western portion of the building could be rendered fit for human habitation by undertaking repairs, the Municipality lacked jurisdiction to permit demolition of the said structure. He also contended resolution taken by the Municipality is an unreasoned one and does not take into consideration the issues of structural stability of the eastern wing and the security and safety of the inhabitants.

12. In rebuttal Mr. Subir Sanyal contends right of his clients to demolish the building is no longer *res integra*. In the earlier round of litigation, the Hon'ble Single Judge had not accepted plan 'A' on the premise that his clients' right as an owner of the property to demolish the same is not a restricted one and nothing has been placed before the Court that prior permission for demolition of the Municipality is required. He further submits his clients' have already furnished a sum of Rs.15 lakhs to secure loss due to damage, if any, caused to the eastern portion.

13. Mr. Sen argues the right to demolish a structure owned by an individual is hedged by Section 223 of the Act, 1993. We are unable to accept his contention. Section 223 of the Act of 1993, inter alia, provides the Board of Councillors may upon recording satisfaction that

a building is unfit for human habitation and cannot be rendered fit without reasonable expenses may direct the owner of the building or any other person having an interest therein to demolish the said building. Scope of the aforesaid provision regulates the power of the Board to direct demolition so that dilapidated structures unfit for human habitation do not endanger safety and security of the public at large.

14. On the other hand, right of an owner to demolish his own building stems from the ownership of the building itself. Until and unless, the said right is regulated by statutory provisions or tortious liability like nuisance under common law the same remains unfettered. Appellant has singularly failed to show that the right to demolish is restricted by any statutory provision under the Act of 1993 or the rules framed thereunder.

15. Mr. Sanyal rightly refers to the judgment of the Hon'ble Single Judge in WPA 9804 of 2021 with WPA 5286 of 2022 with WPA 8241 of 2020 wherein this issue fell for decision and was decided in favour of the private respondents. It may be profitable to quote the observations of the Hon'ble Judge in this regard.

“ 18. It is not in dispute that initially the property was a joint property but subsequently, the same has been partitioned by metes and bounds by a decree passed by the civil court of competent jurisdiction. Hena Chakraborty & Anr. Have been allotted the specific western portion of the property, which is recorded as holding no.167/202. Ownership is a bundle of rights including the right to possess, use and enjoy the thing owned and a right to consume, destroy or alienate it. Therefore, the owner of a property has a right to demolish the building or any portion thereof owned by him and also to erect construction.

24. *Mr. Sanyal is right in contending that the Chartered Engineer travelled beyond the directions contained in the order of appointment by giving suggestions contained under Plan-A, which speaks about as to how the said portion can be made fit for human habitation, which was not the point of reference."*

16. The findings of the Hon'ble Single Judge was further reinforced in appeal when the Hon'ble Co-ordinate Bench while upholding the order, inter alia, directed the Municipality to decide whether the western portion of the property in question can be demolished without damaging in any manner the eastern portion of the said property and nothing more.

17. In this backdrop, appellant is not entitled to rake up a settled issue viz., right of the private respondents to demolish the portion of the building on their land.

18. The issue with regard to apprehension of nuisance or damages suffered by the owners of the other portion of the building was also taken care of as the Hon'ble Co-ordinate Bench had directed the Board to consider the prayer of demolition after taking into consideration the report of the Chartered Engineer and upon ensuring that structural stability of the eastern portion and safety and security of its inhabitants are adequately protected.

19. These issues were thrashed out before the Board of Councillors and perusal of the impugned resolution would show the Board addressed themselves to the concerns expressed by the appellant and

issued directions to safeguard structural stability of the eastern portion and provide adequate compensation in the event of loss or damage to the said portion during demolition work. Therefore, we are not in agreement with the appellant that the resolution is not in consonance with the direction of the Hon'ble Co-ordinate Bench in MAT 673 of 2024 or an unreasoned one. In addition thereto, by the impugned order private respondents have been directed to secure the appellant by depositing Rs.15 lakhs with the Municipality which may be utilized for repairs of eastern wing in the event the same is damaged. We are informed that the said deposit has already been made.

20. Mr. Sen finally submits the resolution of the Board of Councillors requires clarification. It is unclear who shall appoint the experienced senior engineer under whose control and supervision the demolition work is to be undertaken. He also expressed apprehension as expenses of the supervising work were to be borne by the private respondents, the said engineer may not be an impartial expert.

21. We find substance in his submissions. Accordingly we clarify the resolution of the Board of Councillors in the following manner:-

- 1) The demolition work shall be undertaken by private respondent Nos.12 & 13 strictly in terms of plan 'B' of the report of the Chartered Engineer submitted in the earlier proceeding;

- 2) The said work shall be controlled and supervised by a Senior Engineer appointed by the Municipality concerned having adequate experience and qualification;
- 3) Cost and expenses of the Engineer shall be borne by the private respondents;
- 4) The demolition work shall be periodically supervised by the Assistant Engineer, Suri Sub Division, PWD, Birbhum who shall also vet the proposed plan relating to demolition and ensure that the demolition work is done strictly in terms of the safeguards engrafted in plan 'B' of the report of the Chartered Engineer.
- 5) Assistant Engineer shall undertake periodic inspections of the site after notice to the appellant as well as the private respondents;
- 6) The Assistant Engineer shall submit periodic reports with regard to progress of the demolition work indicating strict adherence to the safeguards set out in Plan 'B' and impact of demolition work on structural stability of the eastern wing before the Municipality concerned and to the parties;
- 7) In the event, report of the Assistant Engineer discloses non-compliance of the safeguards set out in plan 'B' of the report of the Chartered Engineer or threat to structural stability of the eastern portion of the building, the Municipality shall direct

stoppage of demolition work till the alleged non-compliance or the issue regarding structural stability is adequately addressed.

21. The demolition work shall be carried on strictly in terms of the clarification made to the resolution of the Board of Councillors and subject to compliance of the directions set out in the impugned order.

22. With these directions appeal and connected application are disposed of.

23. There shall be no order as to costs.

24. Photostat certified copy of this judgment, if applied for, be given to the parties on compliance of all formalities.

I agree.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)

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