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W.P.A. 20049 of 2018

Jyostnara Begam

-vs-

The State of West Bengal & Ors.

Mr. Partha Chakraborty,
Mr. Chayan Debnath,
Mr. Arghya Mullick

....for the petitioner.

Mr. Chinmoy Pal,
Mr. Archan Dutta

....for the respondent no.6

Mr. Supriyo Raychowdhury,
Mr. Sankar Ghosh

....for the Municipality.

Mr. Dwarika Nath Mukherjee,
Mr. Manik Lal De

....for the State.

The writ petition is filed for implementation of the order dated 17th November, 2014 passed by the Chairman, Barasat Municipality. It has been submitted on behalf of the petitioner that vide order dated order dated 17th November, 2014 the respondent no.6 has been directed to demolish unauthorised construction within fifteen days, made at L.R. Plot No.964, Khatian No.2278 under Mouza-Uttarhat within the jurisdiction of Barasat Municipality.

It has further been submitted on behalf of the petitioner that pursuant to the order dated 21st July, 2014 passed by a coordinate Bench on the writ petition being WPA 19708 of 2014 direction was passed upon the concerned authority of Barasat Municipality to pass order

under Section 218 of the West Bengal Municipal Act, 1993 after granting opportunity of making deliberations to the petitioner and respondent no.6. Therefore, the order dated 17th November, 2014 needs to be implemented.

Respondent no.6 is represented by learned advocate who submits that vide order dated 21st July, 2014 coordinate Bench directed Board of Councillors of Barasat Municipality to pass order upon drawing a proceeding under Section 218 of the West Bengal Municipal Act, 1993 but while passing order in terms of the said direction as contained in the order dated 21st July, 2014 instead of Board of Councillors, Chairman on his own passed order dated 17th November, 2014.

It is also contended on behalf of the respondent no.6 that in consideration of the provisions as contained in Section 218 Chairman is not authorised to pass order upon drawing a proceeding under Section 218. Therefore, the said order dated 17th November, 2014 is *ex facie* bad.

Municipality is represented by learned advocate who has made faint attempt to substantiate the order of the Chairman dated 17th November, 2014 but on query being posed to him that how Chairman of the Municipality has derived power to pass such order, it has been

candidly submitted on behalf of the Municipality that let a fresh chance be given to the Board of Councillors of the Municipality to pass order.

Having considered the submissions made on behalf of the parties and on perusal of the order dated 17th November, 2014 it transpires that the Chairman has passed order of demolition in contradistinction to the order passed by the coordinate Bench dated 21st July, 2014.

The coordinate Bench vide order dated 21st July, 2014 specifically directed that upon drawing a proceeding under Section 218 the Board of Councillors of the Municipality would pass an order. Therefore, the Chairman is not authorised to pass order of demolition. Accordingly, the order dated 17th November, 2014 stands set aside.

The Board of Councillors of Barasat Municipality is directed to draw a proceeding afresh under Section 218 of the West Bengal Municipal Act, 1993 within a period of four weeks from the date of communication of this order and conclude the said proceeding within the period of sixteen weeks from the date of communication of this order after granting due opportunity of hearing to the petitioner and the respondent no.6.

The order to be passed on culmination of

the proceeding under Section 218 shall be communicated to the petitioner and the respondent no.6 within one week thereafter.

With the aforesaid direction the writ petition stands disposed of.

However, there shall be no order as to costs.

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

(Saugata Bhattacharyya, J.)