

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

Present:

The Hon'ble **Justice Arijit Banerjee**

And

The Hon'ble **Justice Prasenjit Biswas**

M.A.T. 2124 of 2023

with

CAN 1 of 2023

With

CAN 2 of 2023

With

CAN 3 of 2023

Dr. Ranbeer Bose & Anr.

-Versus-

Anita Das & Anr.

For the Appellants : **Mr. Anindya Lahiri, Adv.,
Mr. Arkadipta Sengupta, Adv.,
Ms. A Mukherjee, Adv.**

For the Respondent No. 1 : **Mr. Sirsanya Bandopadhyay, Adv.,
Mr. Gangadhar Das, Adv.,
Ms. Deboleena Ghosh, Adv.,
Mr. Tanmoy Chattopadhyay, Adv.,**

For the English Bazar Municipality. : **Mr. Ashoke Kr. Banerjee, Ld. Sr. Adv.,
Ms. Sonal Sinha, Adv.,
Mr. Avishek Prasad, Adv.**

Delivered on : 20.02.2024

Prasenjit Biswas, J:-

1. Feeling aggrieved by and dissatisfied with the order dated 05.10.2023 passed by a learned Single Bench passed in connection with a contempt application being CPAN 694 of 2022 this instant appeal is filed at the behest of the appellants.

2. The learned Single Judge passed the following order –

‘Mr. Krishnendu Narayan Choudhury, Chairman, English Bazar Municipality is personally present in Court.

Time has been sought for by the learned senior advocate representing the alleged contemnor to comply the direction passed by the Court.

On such request the matter stands adjourned till 30th November 2023.

The order of the court shall be complied and fresh evidence of compliance be filed on the adjourned date.

On the assurance given by the learned Senior Advocate representing the alleged contemnor, the personal appearance of the alleged contemnor stands dispensed with for the time being’.

3. The Respondent No. 1 (herein) filed a complaint before the English Bazar Municipality, Malda ventilating her grievance that the appellant (herein) has been constructing a building next to her building violating the provision of Rule 50 of the West Bengal Municipal (Building) Rules, 2007 and without leaving requisite open space. As her complaint was not addressed by the Municipal Authority she filed a writ application before the Single Bench being WPA No. 17690 (W) of 2019 with a prayer for giving direction upon the Municipal Authority to take appropriate action. The said writ petition was disposed of on 25.09.2019 by passing a direction which entails that-

“Mr. Sirsanya Bandyopadhyay, learned advocate appearing for the petitioner submits that the Rule 50 of the West Bengal Municipal (Building) Rules,

2007 under 2(a) clearly prescribes that if a building is above 11.0 metre upto 14.5 metre, then the mandatory vacant side space shall be front open space (in metre) 1.5, open space on side 1(in metre) 1.5 metre, open space on side 2 (in metre) 2.5 metre and rear open space (in metre) 4.0 metre. But that statutory mandate has not been followed by the Municipality at the time of sanctioning the plan.

It has also been clearly emphasised by Mr. Bandopadhyay in paragraph 16 how and in what manner mandatory open space has not been kept open by the private respondent no. 5 at the time of constructing the existing building by violating Rule 50 of West Bengal Municipality (Building) Rules, 2007.

Mr. Bandopadhyay submits that the private respondent no. 5 should be restrained from carrying on any further construction on the basis of the disputed sanctioned plan illegally sanctioned by the Municipality.

The submission of Mr. Bandopadhyay, learned advocate appearing for the petitioner is vehemently opposed by the learned advocate appearing for the private respondent no. 5.

Mr. Saha, learned advocate appearing for the Municipality submits that an inspection was caused in absence of the private respondent no. 5. But Mr. Saha does not dispute the submission of the parties.

That being the scenario, I direct the Chairman, English Bazar Municipality, the respondent no. 2 herein to take a decision in respect of the petitioner's complaint dated 25th September, 2018 as well as 5th August, 2019 within six weeks from the date of communication of this order after giving an opportunity of hearing to the petitioner or his authorised representative and the private respondent no. 5 or his authorised representative and thereafter communicate the decision to the parties within one week.

Needless to mention, if it is found in the decision that the private respondent no. 5 without keeping the mandatory open space as stipulated the Rule 50 of the West Bengal Municipal (Building) Rules, 2007, then the respondent no. 2 is directed to take further steps in accordance with law.

Needless to mention, till the decision is taken the private respondents are restrained from carrying on any construction or further construction at the building in question”

Thereafter the Municipal Authority disposed of the application after giving opportunity of hearing to both the parties and passed an order on October 25, 2019. The respondent no 1 (herein) challenged the finding of the Municipality before the Single Bench by filing WPA 24206 of 2019 with a prayer for quashing the order of the municipality and with a further prayer for giving direction upon the municipality to set aside/ cancel the plan sanctioned by it on April 26, 2018 issued in favor of the appellant (herein).

4. The writ petition being no WPA 24206 of 2019 filed by the respondent no 1 (herein) was disposed of by the Learned Single Bench by an order dated February 19, 2021, with the following observations;

“It appears from the order of the Chairman that he has proceeded in the matter on a completely different premise. The court directed the Chairman to consider the representation of the petitioner. The representation of the petitioner was with regard to violation of the provisions of Rule 50 of the West Bengal Municipal (Building) Rules, 2007. The same does not have any relation with either mutation or the pending case under Section 147 Cr.P.C. The Chairman of the Municipality was required to inspect the property and come to a specific finding whether the mandatory open spaces, as prescribed in Rule 50 of the aforesaid Rules has been

maintained by the private respondents at the time of making the construction. The same has not been done. The Chairman ought to have appreciated that mutation of the property and the proceeding pending before the court below does not have any bearing with regard to the unauthorized construction being made in the said premises.

Accordingly, the impugned order dated 25th October, 2019 passed by the Chairman, English Bazar Municipality is set aside. The matter is remanded back to the Chairman of the English Bazar municipality to take steps strictly in accordance with the direction passed by this Court on 25th September, 2019 within a period of six weeks from the date of communication of a copy of this order, after giving an opportunity of hearing to the petitioner and the private respondents.

The private respondents are restrained from carrying on any construction or further construction in respect of the building in question till an order is passed by the Chairman of the Municipality, as directed hereinabove”.

5. Being aggrieved by the said order passed by the Learned Single Bench, the appellant (herein) filed an appeal being MAT 2122 of 2023 with an application for condonation of delay which is still pending before the court.

6. The respondent No. 1 has filed a contempt application being CPAN 694 of 2022 for willful noncompliance of the order passed by the Learned Single Bench dated February 19, 2021 against the chairman of English Bazar Municipality. The chairman of the Municipality passed an order dated February 15, 2023 during the pendency of the said contempt application with a finding that there was no irregularity in the construction made by the appellant and the matter was disposed of. The said order of the Chairman of the Municipality was placed before the Learned Single Bench before

which CPAN 694 of 2022 is pending by way of affidavit of compliance. After taking leave from the court, the respondent no. 1 (herein) filed exception to such affidavit. The Chairman of the Municipality has held interalia that 'there is no need for further measurement as the same has been done and no deviation was found in the construction'.

7. It appears from the order dated February 19, 2021 passed in WPA 24206 of 2019 that learned Single Bench directed the Chairman of the Municipality to inspect the property in question and come to a specific finding whether mandatory open spaces as prescribed under Rule 50 of the West Bengal Municipal (Building) Rules, 2007 has been maintained by the appellant at the time of erection of the building. It is the specific direction upon the authority of the municipality to find out whether there is any violation of Rule 50 of the West Bengal Municipal (Building) Rules, 2007 and no opinion was sought for from the Municipal Authority in that order passed by the learned Single Bench.

8. In pursuance of the direction passed in the contempt application being CPAN 694 of 2022, Chairman of the Municipality appeared personally before the Court and by passing the order under challenge the learned Single Bench directed that 'the order of the court shall be complied and fresh affidavit on compliance be filed on the adjourned date'. Being aggrieved by and dissatisfied with the said order dated October 5, 2023 instant appeal has been preferred by the appellants.

9. Mr. Anindya Lahiri, learned Counsel appearing on behalf of the appellants submitted that the respondent no. 1 (herein) had prayed for cancellation of the sanctioned plan dated 26.04.2018 in WPA 24206 of 2019 and it was deemed to be refused in the order dated 09.02.2021 passed in the said writ petition as it was barred by explanation V of Section 11 of Code of Civil Procedure, 1908. It is specifically stated

by the learned Counsel that the measurement was conducted by the engineer of the municipality and it was found that there is no deviation from the sanctioned plan at the side of the building of the respondent No. 1. Since the municipal authority found no deviation in the construction of the appellant, the instant contempt proceeding is not maintainable. Moreover, the order passed by the chairman of the municipality is an appealable order as per provision of Section 218(3) of the West Bengal Municipal Act, 1993 but the said order of the chairman has not yet been challenged before any forum.

10. To buttress the submission advanced on behalf of the appellant learned Counsel placed reliance on the decisions rendered by the Hon'ble Apex Court in the case of **J.S Parihar Vs. Ganpat Duggar & Ors.** reported in **1996(6) SCC 291** and also in the case of **Midnapore Peoples' Coop. Bank Ltd Vs. Chunilal Nanda and Ors.** reported in **2006(5) SCC 399**. Reliance has also been placed by the side of the appellant on the decision rendered by a single bench of this Court in case of **Avanindra Singh Vs. Krishnendu Ghoshal** in **MAT 885 of 2018 with MAT 1320 of 2018**. Learned Counsel for the appellant has also relied on a decision rendered by the Hon'ble Apex Court in the case of **Kshiti Goswami And Others Vs. Subrata Kundu And Others** reported in **(2013) 11 Supreme Court Cases 618**.

11. In the above referred case of **Kshiti Goswami And Others (supra)** Hon'ble Supreme Court observed at paragraph 11 interalia that:-

"11. It is not in dispute that Selection Committee had recommended the names of 179 candidates including the respondents. Shri Pijush Roy, learned Counsel for the petitioners stated that out of 179 candidates recommended by the Selection Committee, 161 were appointed and the remaining 18 persons were not appointed despite the directions given by the Tribunal and the High Court

because the merit list had become defunct. He made strenuous effort to persuade us to take the view that in exercise of contempt jurisdiction the High Court cannot issue direction for implementation of the order, violation of which led to the initiation of the contempt proceedings, but we have not felt persuaded to agree with him. Rather, we are in complete agreement with the High Court that one of the objects of the contempt jurisdiction which is exercised by the Court under Article 215 of the Constitution read with the Contempt of Courts Act, 1971 is to ensure faithful implementation of the direction given by it. This is precisely what the Division Bench of the High Court has done in this case. Therefore, we do not find any valid ground or justification to entertain the petitioners' challenge to the impugned order."

12. In the above referred case Hon'ble Apex Court observed that one of the objects of the contempt jurisdiction which is exercised by the High Court under Article 215 of the Constitution read with the Contempt Courts Act, 1971 is to ensure faithful implementation of the direction given by it. In the present case by order dated September 25, 2019 the learned Single Bench at the time of disposing of the writ petition passed direction upon the Chairman, Municipality to find out whether the present appellant has constructed the building by keeping the mandatory open space as stipulated in Rule 50 of the West Bengal (Building) Rules, 2007. Thereafter, municipal authority submitted a report but there is no statement in the said report whether the provision as enshrined in Rule 50 of the West Bengal Building Rules, 2007 has been complied with by the present appellants. Thereafter, in the subsequent writ petition being no. WPA 24206 of 2019 the learned Single Bench again remanded back the matter to the Chairman of the Municipality with a direction to take steps strictly in accordance with the direction passed by this Court earlier on 25th

September, 2019. As the said direction was not complied with, the respondent no. 1 herein filed a contempt application and during pendency of the said application Chairman of the Municipality passed the order again in which there is no whisper as to whether or not the present appellants have constructed the building in compliance with the provision of Rule 50 of West Bengal Municipality (Building) Rules, 2007.

13. In the decisions cited on behalf of the appellants it appears that the Hon'ble Apex Court made it clear that the contempt Court should only see about the implementation of the order passed by the Court. There is no question of disagreement with the proposition of law as rendered by the Hon'ble Apex Court that the objects of the contempt jurisdiction which is exercised by the High Court is to ensure faithful implementation of the direction given by the Court. In the report submitted by the chairman of the municipal authority for unknown reason there is no statement whether the appellant herein has complied with the provision of Rule 50 of the West Bengal (Building) Rules, 2007.

14. Mr. Srisanya Bandopadhyay, learned Counsel appearing on behalf of the private respondent no.1/writ petitioner argued before us inter alia that there is no illegality or irregularity in the impugned order passed by the learned Single Bench dated 09.02.2023. Reliance has been placed by the learned Counsel on behalf of the respondent no. 1 on the decision in the case of **Bihar State Government Secondary School Teachers Association Vs. Ashok Kumar Sinha And Others** reported in **(2014) 7 Supreme Court Cases 416** and in the case of **Supreme Court Bar Association Vs. Union of India And Another** reported in **(1998) 4 Supreme Court Cases 409**.

15. In the case of **Bihar State Government Secondary School Teachers Association (supra)** Hon'ble Apex Court observed at paragraph 24 inter alia that:-

“24. At the outset, we may observe that we are conscious of the limits within which we can undertake the scrutiny of the steps taken by the respondents, in these Contempt proceedings. The Court is supposed to adopt cautionary approach which would mean that if there is a substantial compliance of the directions given in the judgment, this Court is not supposed to go into the nitty-gritty of the various measures taken by the Respondents. It is also correct that only if there is willful and contumacious disobedience of the orders, that the Court would take cognizance. Even when there are two equally consistent possibilities open to the Court, case of contempt is not made out. At the same time, it is permissible for the Court to examine as to whether the steps taken to purportedly comply with the directions of the judgment are in furtherance of its compliance or they tend to defeat the very purpose for which the directions were issued. We can certainly go into the issue as to whether the Government took certain steps in order to implement the directions of this Court and thereafter withdrew those measures and whether it amounts to non-implementation. Limited inquiry from the aforesaid perspective, into the provisions of 2014 Rules can also be undertaken to find out as to whether those provisions amount to nullifying the effect of the very merger of BSES with BES. As all these aspects have a direct co-relation with the issue as to whether the directions are implemented or not. We are, thus, of the opinion that this Court can indulge in this limited scrutiny as to whether provisions made in 2014 Rules frustrate the effect of the judgment and attempt is to achieve those results which were the arguments raised by the respondents at the time of hearing of C.A. No. 8226-8227 of 2012 but rejected by this Court. To put it otherwise, we can certainly examine as to whether 2014 Rules are made to

implement the judgment or these Rules in effect nullify the result of merger of the two cadres.”

16. In the above referred case the Hon’ble Apex Court held that if there is a substantial compliance with the direction given by Court it is to be seen whether there is willful and contumacious disobedience of the orders and then the Court would take cognizance. It has also been observed by the Hon’ble Apex Court that the contempt Court should examine as to whether the steps taken by the contemnor to purportedly comply with the direction of the judgment are in furtherance of its compliance or they tend to defeat the very purpose for which the directions were issued.

17. In **Supreme Court Bar Association (supra)** Hon’ble Apex Court observed at paragraph 42 interalia that:-

“The contempt of court is a special jurisdiction to be exercised sparingly and with caution, whenever an act adversely affects the administration of justice or which tends to impede its course or tends to shake public confidence in the judicial institutions. This jurisdiction may also be exercised when the act complained of adversely affects the Majesty of Law or dignity of the courts. The purpose of contempt jurisdiction is to uphold the majesty and dignity of the Courts of law. It is an unusual type of jurisdiction combining "the jury, the judge and the hangman" and it is so because the court is not adjudicating upon any claim between litigating parties. This jurisdiction is not exercised to protect the dignity of an individual judge but to protect the administration of justice from being maligned. In the general interest of the community it is imperative that the authority of courts should not be imperiled and there should be no unjustifiable interference in the administration of justice. It is a matter between the court and the contemner and third parties cannot intervene. It is exercised in a summary

manner in aid of the administration of justice, the majesty of law and the dignity of the courts. No such act can be permitted which may have the tendency to shake the public confidence in the fairness and impartiality of the administration of justice.”

18. In the above referred case Hon’ble Apex Court categorically stated that the contempt Court having special jurisdiction is to be exercised sparingly and with caution and this jurisdiction not only be exercised to protect the dignity of the Court but to protect the administration of justice from being maligned.

19. Mr. Ashoke Kr. Banerjee, learned senior counsel appearing on behalf of the English Bazar Municipality submitted that the learned Single Bench committed error and illegality in passing the order dated October 05, 2023 and has gone beyond the scope and ambit of a proceeding initiated under Article 215 of the Constitution of India read with the Contempt of Courts Act, 1971. It is further submitted by the learned Counsel that the Chairman of the Municipality has passed order during the pendency of the contempt proceeding wherein it is found that construction of the building has been done as per the plan sanctioned by the Municipality and as such there is no question of further compliance of the order dated 19.02.2021 passed in W.P.A. No. 24246 of 2019.

20. We have carefully considered the facts of the case. We see that when the order was passed by the learned Single Bench on September 25, 2019, there was a categorical direction upon the municipal authority to take a specific decision as regards whether or not the appellants (herein) kept the mandatory open space as stipulated in Rule 50 of the West Bengal Municipal (Building) Rules, 2007. However, the report submitted by the Chairman, English Bazar Municipality does not whisper about the categorical direction passed by the learned Single Bench. Thereafter again

when the respondent No. 1 (herein) knocked the doors of this Court by filing WPA 24206 of 2019 with a prayer for quashing of the order of the municipality, the learned Single Bench passed an order with a direction upon the Municipality to comply the earlier order passed by the Court dated 25th September, 2019. As the order of this court was not complied with by the alleged contemnor, the respondent no. 1 filed a contempt application for willful noncompliance of the direction passed by the Court. It is quite astonishing that during pendency of the contempt application the chairman of the municipal authority hurriedly passed an order dated February 15, 2023 with a specific finding that there is no irregularity in the construction made by this appellant herein and more than necessary open space has been left by this appellant on the side of the property of the respondent no. 1 and the matter was disposed. It is the submission of the learned Counsel appearing on behalf of the appellants that the said order passed by the chairman of the municipality has not yet been challenged by the respondent no. 1 before any forum. It is further submitted by the learned Counsel that in a contempt application the Court cannot pass further direction in the matter which has already been closed. Learned Counsel submitted that the Contempt Court is only to ensure about the faithful implementation of the direction given by the court.

21. In the order under challenge, learned Single Bench directed the Chairman, English Bazar Municipality to take steps strictly in accordance with the directions passed by the Court on 25th September, 2019 as the order passed by the learned Single Bench dated 25th September, 2019 was not complied with and as there is willful disobedience to the order. The learned Single Bench passed the direction upon the municipal authority to ensure faithful implementation of the direction given by the Court.

22. What comes out from a perusal of the aforesaid judgments cited in this case is that for an act of contempt to be made out against the contemnor, there has to be a deliberate and willful disobedience and defiance of the order passed by a Court of law. Accordingly, the order passed by the Municipal Authority in compliance of the order passed by the court is to be tested on the principles of law laid down by the Hon'ble Supreme Court in the aforesaid decisions. What is to be seen is whether the Municipal Authority has proceeded to pass the order in compliance of the order passed by the Court of law. In this case there is nothing in the order passed by the Municipality regarding whether or not the appellant constructed the building by keeping open space as per provision of Rule 50 of the West Bengal Municipal (Building) Rules, 2007 when there is categorical direction upon the Chairman of the English Bazar Municipality to take steps strictly in accordance with the direction passed by this Court on 25th September, 2019. The learned Single Bench by passing the impugned order dated 05.10.2023 directed the alleged contemnor to comply with the direction passed by the court and file fresh affidavit of compliance. On that date a prayer was made by the learned senior advocate representing the alleged contemnor to comply the direction passed by the court. The alleged contemnor was directed by the court to come to a specific finding as to whether the mandatory side open spaces as prescribed in Rule 50 of the West Bengal Municipal (building) Rules, 2007 have been maintained at the time of making construction by passing orders repeatedly on 25.09.2019 and 14.09.2023 and 05.10.2023 in the earlier and present round of litigations. The Municipal Authority in its orders did not mention whether the directions passed by the Court have been faithfully complied with. Moreover, the direction of the Court is required to be complied with in the manner as directed.

23. This Court has repeatedly directed the Municipal Authority to specifically decide the question of whether or not the appellants, while constructing their house, maintained the requisite open spaces prescribed by Rule 50 of the 2007 Rules. We are surprised to note that on each occasion, the Chairperson of the Municipality has scrupulously avoided reference to that rule. The object of exercise of contempt jurisdiction by the High Court is not only to uphold the dignity of the Court but also to ensure that the order giving rise to the contempt application, is implemented in its true, intent and spirit. This is what the learned Single Judge has done by passing the order under appeal.

24. Accordingly, we find there is no illegality or material irregularity in the impugned order passed by the learned Single Bench and accordingly, it does not call for any interference. In view of above discussion we hold that the present appeal is devoid of any merit and is liable to be dismissed.

25. Accordingly, MAT 2144 of 2023 is hereby dismissed on contest.

26. Impugned order dated October 5, 2023 passed by the learned Single Bench in connection with CPAN 694 of 2022, WPA 24206 of 2019 is hereby affirmed.

27. Interim order if any stands vacated.

28. There will be no order as to costs.

29. All the connected applications are hereby also dismissed and closed.

Urgent Photostat certified copies of this order, if applied for, be made available to the parties subject to compliance with requisite formalities.

I agree.

(ARIJIT BANERJEE, J.)

(PRASENJIT BISWAS, J.)

Later

After judgment is delivered in Court, learned Advocate for the appellants requests for stay of operation of the judgment and order.

Such request is considered and rejected.

(ARIJIT BANERJEE, J.)

(PRASENJIT BISWAS, J.)