

**Form No. J(2)**

IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION  
APPELLATE SIDE

Present:

**The Hon'ble Justice Saugata Bhattacharyya**

**W.P.A. 27600 of 2015**

**(IA NO: CAN 2/2016 (Old No: CAN 10136/2016) &  
CAN 3/2020 (Old No: CAN 1334/2020)**

**Sukhdev Singh Warna & Anr.**

**-vs-**

**The Municipal Commissioner, Kolkata Municipal  
Corporation & Ors.**

For the Petitioners : Mr. Aniruddha Chatterjee,  
Mr. Prabjot Singh,  
Mr. Sarbjot Singh  
Mr. Subhasree Patel,  
Mr. Sayak Chakraborti,  
Mr. Santanu Talukdar,  
Mr. Animesh Bhattacharya,  
Mr. Shreya Mukhopadhyay,  
Mr. Wrickbrata Roy,  
Ms. Saini Das

For the respondent nos.3 &4 : Mr. Abhrajit Mitra  
Mr. Satadeep Bhattacharya,  
Mr. Amiya Narayan Mukherjee

For the State : Mr. Achintya Kumar Banerjee,  
Mr. Saurav Chaudhuri

Hearing concluded on : 07.03.2024

Judgment on: 07.03.2024

**Saugata Bhattacharyya, J.:**

The writ petition has been presented, *inter alia*, challenging two orders dated 4<sup>th</sup> May, 2012 and another dated 15<sup>th</sup> October, 2015 passed by the Special Officer (Building) and Municipal Building Tribunal on B.T. Appeal No.66 of 2012 respectively.

Mr. Chatterjee, learned counsel representing the petitioners submits that the aforesaid two orders passed by the adjudicating authorities at two stages are not tenable since a decree was passed by the civil court on Title Suit No.66 of 1961 dated 1<sup>st</sup> February, 1961 declaring the order passed by the Kolkata Municipal Corporation (hereinafter referred to as “Corporation”) on 6<sup>th</sup> July, 1960 and which was confirmed vide notice dated 21<sup>st</sup> September, 1960 deciding demolition of the structure at the suit premises illegal and the corporation was permanently restrained from demolishing the structure at the premises in question.

According to the petitioners this decree dated 1<sup>st</sup> February, 1961 is an important aspect in determining the validity and legality of the aforesaid two orders passed by the adjudicating authorities at two stages since it has been

submitted that the alleged construction made by the petitioners should not be treated as new construction rather it is a repairing work of the pillars at the premises in question. Therefore, the contention of the petitioners is the structure was there which was protected by the decree dated 1<sup>st</sup> February, 1961 only repairing work was carried out for strengthening those pillars which does not require any formal permission from the corporation thereby the orders dated 4<sup>th</sup> May, 2012 and 15<sup>th</sup> October, 2015 are required to be declared bad.

It is also contended on behalf of the petitioners that vide order dated 4<sup>th</sup> May, 2012 the Special Officer (Building) made an attempt to decide the right, title and interest of the parties to this writ petition which is not permissible under the law as a result whereof the decision dated 4<sup>th</sup> May, 2012 gets vitiated. In addition thereto reliance is placed on Rule 3(2)(i) of the Kolkata Municipal Corporation Building Rules, 2009 since according to the petitioners the work done by them does not even require permission of repairing since such work fulfils the exception clause as contemplated under Rule 3(2)(i).

It is submitted by the learned advocate for the petitioners that the report of the concerned engineer of Corporation dated 12<sup>th</sup> October, 2011 though was taken into consideration by the adjudicating authorities it appears from the said report that the inspection was carried out by the engineer on 26<sup>th</sup> September, 2011 but a formal complaint was lodged by the respondents nos. 3 & 4 on 29<sup>th</sup> September, 2011 which is three days after the inspection made by the engineer. Therefore, on the date of inspection on 26<sup>th</sup> September, 2011 the issue was not subsisting before the Corporation for preparing the report. Accordingly the said report may not be relied upon while deciding the issue involved in this writ petition.

Mr. Banerjee, learned advocate representing the Cooperation has made submission to defend the decisions taken by the adjudicating authorities which are under challenge in this writ petition and attention of this Court has been drawn to the relevant part of the order dated 4<sup>th</sup> May, 2012 wherefrom it appears that prayer was made on behalf of the petitioners for permitting them to retain the unauthorised construction. From other part of the said order dated 4<sup>th</sup> May, 2012, according to the learned

advocate for the Corporation, it transpires that to avoid mishap members of a particular religious community decided to repair to the extent iron frame to replace wooden ballies which was in existence for more than sixty years.

It is contended that from such case made out before the Special Officer (Building) on behalf of the petitioners it is apparent that replacement of wooden ballies by iron frames does not come under the purview of Rule 3(2)(i) of the Kolkata Municipal Corporation Building Rules, 2009. Therefore if such work is to be treated as repairing work as per the contention of the petitioners, same requires due permission from the Corporation which is absent in the present case.

Lastly, reliance has been placed on the report of the concerned engineer of the Corporation dated 12<sup>th</sup> October, 2011 copy of which has been placed before this Court previously and was taken on record. It appears from said report that on routine inspection in the month of September, 2011 it was found that unauthorised construction was made at the instance of the petitioners which led the concerned authority of the Corporation to

issue stop work notice under Section 401 which was not complied with by the petitioners resulting in deputing guard to prevent the petitioners from making such construction. However, it has been submitted that such effort on the part of the Corporation went in vain and defying all steps taken by the Corporation the petitioners constructed eighteen(18) iron pillars replacing wooden ballies which was duly considered by the adjudicating authorities leading to pass the orders dated 4<sup>th</sup> May, 2012 and subsequently 15<sup>th</sup> October, 2015.

Respondent nos.3 & 4 are represented by Mr. Mitra, learned senior advocate who submits the nature of construction made by the petitioners goes to show that it does not come under Rule 3(2)(i) of the Kolkata Municipal Corporation Building Rules, 2009; therefore the petitioners were under the obligation to obtain necessary permission for repairing work if the construction made by the petitioners is treated as repairing work not a new construction.

In addition thereto, reliance has been placed on three orders passed by the coordinate Bench on a writ petition being WPO 929 of 2011 and the copies of those

three orders dated 28<sup>th</sup> November, 2011, 9<sup>th</sup> January, 2012 and 7<sup>th</sup> April, 2015 are placed before this Court and the same are taken on record.

On conjoint reading of the aforesaid three orders passed on the writ petition being WPO 929 of 2011 and the report of the Executive Engineer (Building) dated 20<sup>th</sup> December, 2011 prepared in terms of the order dated 28<sup>th</sup> November, 2011 of the coordinate Bench, according to the private respondents, it is amply clear that construction was going on in the month of September, 2011 resulting in issuance of stop work notice under Section 401.

It has been submitted by Mr. Mitra that the aforesaid orders of the coordinate Bench read with the report dated 20<sup>th</sup> December, 2011 support the inspection report of the concerned engineer of the Corporation dated 12<sup>th</sup> October, 2011, therefore it points at making new construction by the petitioners in the month of September, 2011 which by no stretch of imagination can be treated as repairing of old structure which was permitted to be retained by the dint of decree dated 1<sup>st</sup> February, 1961.

It is also submitted on behalf of the private respondents that if it is assumed that the stop work notice

which was issued under section 401 was not the correct step taken by the Corporation then the course which was left open to the petitioners was to challenge this notice under section 401 but the petitioners without following the path of law defied the stop work notice and went on making construction which cannot be countenanced.

In support of the contentions made on behalf of the private respondents reliance has been placed on a judgment of the Hon'ble Division Bench, reported in (2004) 3 CHN, page-19 (**Bonwarilal Goel -vs- Commissioner, Corporation of Calcutta & Ors.**), paragraph 17.

Having considered the submissions made on behalf of the parties and on perusal of the materials available on record including the inspection report dated 12<sup>th</sup> October, 2011 of the concerned engineer of the Corporation this Court needs to consider the order dated 4<sup>th</sup> May, 2012 passed by the Special Officer (Building) and the order of the Municipal Building Tribunal dated 15<sup>th</sup> October, 2015 confirming the order of the Special Officer (Building). On drawing attention to internal page 3 of the order dated 4<sup>th</sup> May, 2012 passed by the Special Officer (Building) it has been urged on behalf of the petitioners that in effect the

Special Officer (Building) tried to decide the right, title and interest of the parties to the proceeding which the Special Officer is not permitted under the law. However, while adjudicating the validity of the order dated 4<sup>th</sup> May, 2012, this Court finds it apt to test the said order in its entirety upon reading the whole order not focusing on a particular part of the order where in the context of the suit which was decreed on 1<sup>st</sup> February, 1961 certain observations were made by the Special Officer. This court is a court of equity exercising its judicial review power under Article 226 of the Constitution therefore what appeals to this court is whether the alleged construction made by the petitioners in the month of September, 2011 can be termed as repairing work or a new construction.

On perusing the case made out by the petitioners before the Special Officer as it appears from the order dated 4<sup>th</sup> May, 2012 it can safely be concluded that it is not a case of repairing of old structure since old wooden ballies were replaced by iron pillars. It is known to everybody that in the case of a new construction there is requirement of compliance of relevant provisions of the Kolkata Municipal Corporation Act, 1980 which postulates obtainment of

permission; petitioners were certainly required to obtain prior sanctioned plan before the construction work which was carried out in the year 2011 as it is apparent from the inspection report of the concerned engineer dated 12<sup>th</sup> October, 2011.

Though in the orders of the adjudicating authorities inspection report of the Corporation was relied upon but this court thought it fit to call for production of said report. Accordingly learned advocate of the Corporation produced report dated 12<sup>th</sup> October, 2011 and copy of the same was supplied to the learned advocate for petitioners. Petitioners have filed exception to the said report but nothing has been found which could corroborate submission made on behalf of the petitioners that it was not a new construction but repairing of existing pillars. Orders passed by the co-ordinate bench on the writ petition being WPO 929 of 2011 also depicts same facts. In the affidavit-in-opposition of the private respondents to the writ petition in paragraph-17 another inspection report dated 20<sup>th</sup> December, 2011 prepared in terms of the order dated 28<sup>th</sup> November, 2011 passed on the aforesaid writ petition is set out by which incidents described in the report dated 12<sup>th</sup> October, 2011

are corroborated which suggest, it is case of new construction made in the month of October/November, 2011.

On perusal of both the orders dated 4<sup>th</sup> May, 2012 and 15<sup>th</sup> October, 2015 it appears that due credence was given to the inspection made by the concerned engineer of Corporation in order to find out the veracity of the case made out by the petitioners and the Special Officer (Building) and subsequently Municipal Building Tribunal decided against the petitioners on coming to the finding that the construction made by the petitioners ought not to be treated as repairing of old structure but it is a new construction. It is also an admitted position that such construction was carried out by the petitioners without obtaining any sanctioned plan from the concerned authority of the Corporation.

Though an attempt has been made on behalf of the petitioners to term such construction as repairing work and if court proceeds on the premise that it is a repairing work in that event too Rule 3(2)(i) does not apply in the present case since Rule 3(2)(i) provides that for replacing bricks, stones or repairing of damaged pillars or beams

permission as contemplated under Rule 3(1) is not required. However, the work which has been carried out by the petitioners is replacement of wooden ballies by constructing eighteen (18) iron pillars; if such work is to be treated as repairing work in that event a formal permission under Rule 3(1) is necessary but petitioners have failed to produce any document to demonstrate before this Court that they were permitted to carry out such repairing work.

The observations made by the Hon'ble Division Bench in **Bonwarilal Goel** (supra) appears to be applicable in the present case since petitioners defied notice under Section 401 and in spite of deputing guard they went on making unauthorised construction; therefore, it is not the case where court should exercise equity in order to protect such construction.

In addition thereto reliance is placed on the judgment of the Apex Court, reported in **(2013) 5 SCC 336 (Dipak Kumar Mukherjee -vs. Kolkata Municipal Corporation & Ors.)**. Paragraph 2 of the said judgment is quoted below:-

*“2. In the last four decades, the menace of illegal and unauthorized constructions of buildings and*

*other structures in different parts of the country has acquired monstrous proportion. This Court has repeatedly emphasised the importance of planned development of the cities and either approved the orders passed by the High Court or itself gave directions for demolition of illegal constructions as in K. Ramadas Shenoy v. Town Municipal Council, Udipi, Virender Gaur v. State of Haryana, Pleasant Stay hotel v. Palani Hills Conservation Council, Cantonment Board, Jabalpur v. S.N. Awasthi, Pratibha Coop. Housing Society Ltd. v. State of Maharashtra, G.N. Khajuria v. DDA, Manju Bhatia v. NDMC, M.I. Builders (P) Ltd. v. Radhey Shyam Sahu, Friends Colony Development Committee v. State of Orissa, Shanti Sports Club v. Union of India and Priyanka Estates International (P) Ltd. v. State of Assam.”*

In view of aforesaid discussion, this Court does not find merit in this writ petition and the same stands dismissed without interfering with the orders passed by the Special Officer (Building) dated 4<sup>th</sup> May, 2012 and Municipal Building Tribunal dated 15<sup>th</sup> October, 2015.

In view of the aforesaid observations concerned authority of Kolkata Municipal Corporation shall take steps in terms of the order of demolition and to demolish the structure in question within a period of eight weeks from

date and the cost of such demolition shall be recovered from the petitioners.

The concerned authority of Corporation shall be at liberty to obtain necessary assistance from concerned police authorities to facilitate demolition work.

Applications, if pending, also stand dismissed.

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.)**