

08.03.2024
Item Nos. 1 to 3
PG/RP/KS
Ct.7

W.P.A No. 9804 of 2021

**Hena Chakraborty & Anr.
Vs.
The State of West Bengal & Ors.
With**

**W.P.A No. 5286 of 2022
Gouri Chakravarty & Ors.
Vs.
The State of West Bengal & Ors.**

**With
W.P.A No. 8241 of 2020**

**Gouri Chakravarty & Ors.
Vs.
The State of West Bengal & Ors.
With**

Mr. Subir Sanyal
Mr. Ratul Biswas
Mr. Sumouli Sarkar
Mr. Sourajit Mukherjee ... for the petitioners
(in W.P.A No. 9804 of 2021)

Mr. Saikat Chatterjee
Mr. Puranjan Pal
.....for the petitioners in
(W.P.A. 5286 of 2022),
(W.P.A. 8241 of 2020)
&
for the respondent nos. 9 to 14 in
W.P.A. 9804 of 2021

Mr. Animesh Mukherjee
.....for the Suri Municipality

Mr. Lalit Mohan Mahata
Ms. Jyotsna Roy Mukherjee
.....for the State in
(W.P.A. 5286 of 2022)

Mr. Rajarshi Basu
Mr. S.T. Mina
....for the State in
(W.P.A. 9804 of 2021)

- 1.** These writ petitions involve common question of law and facts for which they are taken up for analogous hearing and are being decided by this order.
- 2.** Gouri Chakravarty & Others filed a writ petition, being W.P.A. 8241 of 2020, challenging the decision of the Chairman of Suri Municipality dated March 11, 2020 allowing the prayer of Hena Chakraborty & Anr. for demolition of a portion of a building, being holding no.167/202 under the Suri Municipality.
- 3.** During the pendency of the said writ petition, the Chairperson of the Board of Administrators, Suri Municipality, Birbhum passed an order dated December 2, 2020 thereby cancelling/withdrawing the permission granted by the Suri Municipality to demolish by an order dated 22nd February, 2020.
- 4.** The said order of the Chairperson dated 2nd December, 2020 is under challenge at the instance of Hena Chakraborty & Anr. in W.P.A. 9804 of 2021.
- 5.** A coordinate Bench, by an order dated August 10, 2021 passed in WPA 9804 of 2021, directed the competent authority of the concerned department of the municipality to cause an inspection of the premises in question in presence of the respective parties and to prepare a report with regard to the possibility of consequences of demolition of the portion enjoyed by Hena Chakraborty & Anr. without affecting safety,

security and structural stability as also the peaceful enjoyment of the portion belonging to Gouri Chakravarty & Ors.

6. Pursuant to such direction, the municipality caused an inspection of the premises through its Sub-Assistant Engineer, who after physical verification of the property, submitted an enquiry report dated September 4, 2021. Such enquiry report dated September 4, 2021 is under challenge in W.P.A. 5286 of 2022 at the instance of Gouri Chakravarty & Ors.

7. A two-storied building is standing on RS Dag No.1591 corresponding to LR Dag No.2296, JL No.103 under Police Station-Suri in the district of Birbhum. The said building was initially owned by the predecessors of the respective petitioners. Since a dispute with regard to joint possession of the property cropped up between the co-sharers, a suit for partition was filed before the then Court of the learned Subordinate Judge, Suri, District-Birbhum, being Title Suit No.46 of 1950 (Partition). The said suit was decreed in preliminary form and thereafter a final decree for partition was passed. The western portion of the said two-storied building was allotted to the predecessors-in-interest of Hena Chakraborty & Anr. and the eastern portion was allotted in favour of the predecessors-in-interest of Gouri Chakravarty & Ors. The portion allotted to Hena Chakraborty was recorded in the Register of the Suri Municipality as holding

no.167/202 and the portion allotted in favour of Gouri Chakravarty & ors. was recorded as holding no.168/203. Hena Chakraborty & Anr. applied before the Chairman, Suri Municipality praying for permission to demolish the building, being holding no.167/202. The Chairman of the Suri Municipality by an order dated 22nd February, 2020 allowed the prayer of Hena Chakraborty & Anr. subject to the condition that no hazard is created to the neighbours and also passersby during the time of execution of demolition. Thereafter, the Chairperson of the Board of Administrators, Suri Municipality cancelled/withdrew the permission for demolition by an order dated 2nd December, 2020.

8. Mr. Sanyal, learned advocate appearing for the writ petitioners in W.P.A. 9804 of 2021 submits that the municipality acted in an arbitrary manner by cancelling/withdrawing the permission granted in favour of Hena Chakraborty & Anr. to demolish the building without giving them an opportunity of hearing. He submits that such an action on the part of the municipality amounts to gross violation of principles of natural justice. He submits that since Hena Chakraborty & Anr. have exclusive right, title, interest and possession in respect of the property, being holding no. 167/202, they are entitled to use their property as per their desire. He submits that considering the fact that the building is more than 100 years old and the same is not fit for

human habitation, the petitioners want to put the property into an effective use by erecting a new construction thereupon after demolishing the portion being holding no. 167/202. By referring to the report of the Chartered Engineer, Mr. Sanyal submits that the Chartered Engineer has given two fold suggestions therein, the first of which has been narrated under Plan-A and the other under Plan-B. By referring to the order appointing the Chartered Engineer, he submits that the Chartered Engineer travelled beyond the directions contained in his order of appointment as, according to Mr. Sanyal, he was only directed to give his opinion as to whether Western portion of the building being holding no. 167/202 could be demolished without causing any damage to the Eastern portion of the building, being holding no. 168/203.

9. Mr. Sanyal submits that the Chartered Engineer has specifically narrated the manner and the method which is to be used for demolition of Holding No. 167/202 and the petitioners are agreeable to abide by the directions contained under Plan-B.

10. Mr. Chatterjee, learned advocate appearing for the writ petitioners in W.P.A. 8241 of 2020 and W.P.A. 5286 of 2022 submits that the claim of Hena Chakraborty & Anr. before the municipality was that the building being holding no. 167/202 is a dilapidated one and the same requires urgent repairs. In order to enable them to effect

such repairs and in order to make a dilapidated building fit for human habitation, Hena Chakraborty & Anr. applied before the municipality for permission. Such permission was accorded in favour of Hena Chakraborty behind the back of Gouri Chakravarty & Ors.

11. Mr. Chatterjee submits that after coming to know of such permission, Gouri Chakravarty & Ors. raised an objection against the demolition order passed by the Chairman on 22nd February 2020 by submitting a detailed written objection dated 21st September, 2020. He submits that the Chairperson, Board of Administrators of municipality upon being satisfied with the objection raised by Gouri Chakravarty & Ors. and also being satisfied with the fact that it is practically impossible to demolish any portion of the said building leaving aside the other portion, cancelled the original permission granted in favour of Hena Chakraborty & Anr.. He submits that the only grievance of Hena Chakraborty & Anr. in the writ petition filed by them was that the Chairperson cancelled the permission for demolition without giving them an opportunity of hearing. He thus submits that the scope of the writ petition filed by Hena Chakraborty & Anr. is very limited, which should not be allowed to be enlarged.

12. By referring to section 223 of West Bengal Municipal Act, 1993 (for short 'the Act of 1993'), Mr. Chatterjee submits that sufficient provisions have been made

thereunder to effect repairs as well as to carry out work of improvement in the form of structural alterations in order to make the property fit for human habitation. He thus, submits that since it is the case of Hena Chakraborty & Anr. that the property is a dilapidated one, the only point to be decided is whether such property is a dilapidated one and also whether the same can be made fit for human habitation after effecting repairs and/or work of improvement as contemplated under sub-sections (6) and (7) of section 223 of the Act of 1993.

13. He submits that the Chartered Engineer in his report dated 16th October, 2023 has also opined that the Western Wing i.e. holding no. 167/202 cannot be termed as a dilapidated building. He also refers to the suggestions contained under Plan-A of the report of the Chartered Engineer, which states that the property can be made habitable after undertaking certain repairing works. He thus, concludes by submitting that Hena Chakraborty & Anr. should not be permitted to demolish holding no. 167/202 as such portion cannot be said to be a dilapidated one.

14. Mr. Mukherjee, learned advocate appearing for the Suri Municipality submits that the property is not a dilapidated one, as would be evident from the report of the Chartered Engineer.

15. Mr. Rajarshi Basu, learned advocate and Ms. Jyotsna Roy Mukherjee, learned advocate representing the State have uniformly submitted that the allegations contained in the writ petitions are not directed against the State respondents and also that no relief has been claimed against the State.

16. Heard the learned advocates for the parties and perused the materials placed.

17. The primary objection of Gouri Chakravarty & Ors. appears to be with regard to demolition of a portion of a two storied building, which is recorded as holding no. 167/202. According to them, any attempt to demolish the same would cause damage to the other portion of the building being holding no. 168/203.

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.

19. Since Hena Chakraborty & Anr. is the owner of a specific portion of the two storied building being 167/202, they have a right to erect a new building thereupon by demolishing the existing building. Though the right of Hena Chakraborty & Anr. to construct after demolishing a portion of the building cannot be disputed, the larger issue would be whether the said writ petitioners can be allowed to erect after demolishing a portion of the two storied building having common wall and roof.

20. The Sub-Assistant Engineer of the Municipality submitted a report dated September 4, 2021 suggesting certain measures to be taken at the time of demolition. Since the said report appeared to this Court to be a cryptic one, this Court, by an order dated 29.08.2023 appointed a Chartered Engineer for the purpose of causing an inspection of the property and to submit a report as to whether the western portion can be demolished without causing any damage to the safety, security and structural stability of the eastern portion and the safeguard, if any, to be taken therefor.

21. The Chartered Engineer, after serving due notices to the respective parties including the Suri Municipality, caused an inspection of the property and submitted a report dated 16th October, 2023.

22. After going through the said report, this Court finds that the Chartered Engineer has given two suggestions,

one under Plan-A and the other under Plan-B. In Plan-B, the Chartered Engineer has opined that a new construction on the Western part being holding no. 167/202 is technically possible subject to the conditions as mentioned under various sub-paragraphs under Plan-B. For the purpose of better appreciation of this matter, Plan-B of the report of the Engineer is extracted hereinbelow:-

“D. PLAN – B

If the owner of the western wing remain adamant for demolition of their wing so that they can go for new construction, the same is technically possible subject to the conditions that the following aspects/points must be maintained meticulously under the strict and constant supervision of a Civil Engineer having sufficient knowledge of demolition works.

- i. Before starting demolition works, surrounding area should be covered with tarpoline/ nets & water sprinklers etc. to avoid chunks, piece of brick falling here and there and dust to be washed so that neighbors 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 2 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 neighbors 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 works.

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.”

23. After going through the suggestions contained under Plan-B, this Court finds that the Chartered Engineer has, opined that demolition of the western portion is technically possible. The said report in details stated as to how the work of demolition has to be carried out and also as to the preventive measures that are to be taken in order to prevent pollution of the locality as a result of such demolition.

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.

25. The order of this Court dated 29th August, 2023 directed the Chartered Engineer to submit a comprehensive report on the issues as to whether the western portion can be demolished without causing any damage as to the safety, security and structural stability of the Eastern portion and the safeguards, if any, to be taken as well as for matters connected thereto have not been challenged by any of the parties. Therefore, the suggestions contained under Plan A of the Chartered Engineer's Report has to be eschewed. It would be relevant to note that none of the parties have challenged the points framed by this Court for inspection. No

exception to the suggestions contained under Plan B of the said report has been filed by either of the parties.

26. This Court is of the considered view that the report of the Chartered Engineer more particularly Plan B is a comprehensive one and answers the points which are necessary for deciding the principal issue in this writ petition. In view thereof, the other reports relied upon by the respective parties as well as the report of the Sub Assistant Engineer are not considered to be relevant for arriving at a final decision in these writ petitions.

27. Mr. Sanyal, learned advocate in course of his argument, did not however, dispute the fact that the building can be made fit for human habitation, as suggested by the Chartered Engineer but he submits that Hena Chakraborty & Anr. is not inclined to undertake the huge expenditure necessary for repairs of holding no. 167/202 to make it fit for human habitation in the manner, as suggested by the Engineer under Plan A.

28. Neither the municipality nor the Court can compel an owner of the property to use an old property by only undertaking necessary repairing works as well as works of improvement as contemplated under sub-sections (6) and (7) of section 223 of the Act of 1993. Neither Mr. Chatterjee nor Mr. Mukherjee could invite the attention of the Court to any of the provisions of the Act of 1993, which prohibits an owner of a specific portion of the constructed portion to demolish the same. The only

concern is that no damage should be caused to the other portion while carrying out the work of demolition.

29. Since the Chartered Engineer has specifically mentioned the manner as to how the said demolition is to be carried out and no objections to such report has been taken by either of the parties to the writ petitions, this Court is of the considered view that a direction is to be passed upon the Municipality to take a decision with regard to the prayer for permission to demolish in the light of the observations contained in the report of the Chartered Engineer dated 16.10.2023 and for erection upon the said property.

30. The permission granted by the Chairman to demolish by an order dated 22nd February, 2020 is not based on any report of an expert. This Court is of the considered view that demolition of one part of a building having a common wall and a common roof could not have been granted in such a mechanical manner without having any opinion of an expert in that regard. For such reason, the decision of the Chairman dated 22.02.2020 is liable to be set aside and quashed.

31. The order of cancellation issued by the Chairperson, Board of Administrator dated 2nd February, 2020 states that it is practically impossible to demolish any portion of the building leaving aside the other portion. The said order is also without any basis, as such finding is not based on any opinion of the expert. That apart, it also

does not appear that an opportunity of hearing was given to Hena Chakravarty and another while cancelling and withdrawing the permission granted earlier. This act on the part of the Municipality in cancelling and withdrawing the earlier permission order amounts to gross violation of the principles of natural justice. For all the reasons, the order of the Chairperson, Board of Administrator dated 2nd December, 2020 is also liable to be interfered with by this Court.

32. Accordingly, the permission granted by the Chairman to demolish the building vide order dated 22nd December, 2020 as well as the subsequent order dated 2nd December, 2020 are set aside and quashed. The Municipality is directed to decide the prayer of Hena Chakraborty and another for demolition of the building as contained in the representation dated 22nd February, 2020, which is annexed at page 27 of W.P.A. 9804 of 2021, in the light of the observations made in this order, after giving an opportunity of hearing to the respective writ petitioners and by passing a reasoned order. It is, however, made clear that while passing such order, the Municipality shall consider the suggestion contained in the report of the Chartered Engineer dated 16th October, 2023 under Plan – B of the said report.

33. In the event, the permission to demolish the building is granted in favour of Hena Chakraborty and another, it will be open to the Municipality to suggest any measures

to be taken and also to supervise and monitor the aspect of demolition. The Municipality shall pass the reasoned order as expeditiously as possible, but positively within a period of four weeks from the date of receipt of a server copy of this order.

34. With the above observations/directions, W.P.A. 9804 of 2021, W.P.A. 5286 of 2022 and W.P.A. 8241 of 2020 stand disposed of.

35. There shall be, however, no order as to costs.

36. 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.)