

04 25.04.2024  
rkd Ct.15

W.P.A. 9174 of 2020

Ashok Kumar Pal

-vs-

State of West Bengal & Ors.

Mr. Rwitendra Banerjee,  
Mr. Shibasis Chatterjee

....for the petitioner.

Mr. Prosenjit Mukherjee,  
Mr. Arghya Kamal Das

....for the private respondent.

Mr. Tapas Kumar Ghosh,  
Mr. Tanmoy Chowdhury

....for the Hooghly Chinsurah Municipality.

In the writ petition petitioner has prayed for implementation of the order dated 31<sup>st</sup> October, 2018 passed by the Board of Councillors of Hooghly Chinsurah Municipality which was communicated by the Chairman of the said Municipality vide memo dated 10<sup>th</sup> December, 2018. While passing order dated 31<sup>st</sup> October, 2018 Board of Councillors heard one Satish Dey on behalf of Srikanta Dey and the present writ petitioner in connection with the proceeding which was drawn up under Section 218 of the West Bengal Municipal Act, 1993.

The learned advocate representing the petitioner, seeking demolition of unauthorised construction in the premises in question alleged to have been made by the erstwhile owner of the said

premises, submits that once an order has been passed by the Board of Councillors on 31<sup>st</sup> October, 2018 which was communicated vide memo dated 10<sup>th</sup> December, 2018 that needs to be complied with immediately upon carrying out demolition work.

Attention of this Court is drawn to the order of the coordinate Bench dated 8<sup>th</sup> March, 2021 wherein it has been recorded that on behalf of the private respondent necessary steps were taken to demolish the unauthorised construction. Taking note of such submission made on behalf of the private respondents Executive Officer of Hooghly Chinsurah Municipality was directed to conduct an inspection at the site within certain time in order to find out the veracity of such submission made on behalf of the private respondent. Subsequently, an inspection was carried out on 31<sup>st</sup> March, 2021 and a report was prepared dated 6<sup>th</sup> April, 2021 wherein the Executive Officer of the Municipality reported that the alleged unauthorised construction was not demolished till 31<sup>st</sup> March, 2021.

According to the petitioner since the stand was taken on behalf of the private respondents before the coordinate Bench on 8<sup>th</sup> March, 2021 that necessary steps were taken for demolition of

unauthorised construction in terms of the order of the Board of Councillors dated 31<sup>st</sup> October, 2018 subsequently the added respondent cannot take the plea to prefer appeal under Section 218(3) of the West Bengal Municipal Act, 1993.

On behalf of the added respondent no.6 it has been submitted that the property in question devolved upon him on execution of gift deed on 26<sup>th</sup> September, 2018 by one Srikanta Dey being respondent no.5 and the order of demolition was passed by the Board of Councillors on 31<sup>st</sup> October, 2018. It is the contention of the added respondent no.6 that in terms of relevant provision of Section 218 since on the date of passing demolition order by the Board of Councillors added respondent was the owner of the property he should have been given opportunity to make deliberation before the Board of Councillors which has been denied in the present case.

It is also submitted that since the copy of the order of the Board of Councillors dated 31<sup>st</sup> October, 2018 has not been formally communicated to the added respondent no.6 he could not prefer appeal under Section 218(3) questioning the order of demolition.

On behalf of the added respondent no.6

prayer has been made to grant him opportunity to make deliberation before the Board of Councillors before decision is taken whether the construction in question is authorised or not.

Having considered the submissions made on behalf of the parties and on perusal of records in order to satisfy the conscience of this Court vide order dated 18<sup>th</sup> April, 2024 Court directed the learned advocate representing the Hooghly Chinsurah Municipality to produce the decision of the Board of Councillors dated 31<sup>st</sup> October, 2018 since on perusal of the memo dated 10<sup>th</sup> December, 2018 it transpired on last occasion that instead of Board of Councillors decision was taken by the Chairman of the Municipality which is contrary to the provisions contemplated under Section 218.

Today the resolution book is produced before this Court on behalf of the Hooghly Chinsurah Municipality from where it appears that it was not the Chairman but the Board of Councillors took decision on 31<sup>st</sup> October, 2018 deciding that the construction is unauthorised requiring demolition.

Question comes up whether the added respondent no.6 was permitted to make deliberation before the Board of Councillors before

taking decision on demolition or not.

From the relevant part of the decision of the Board of Councillors dated 31<sup>st</sup> October, 2018 it also appears that one Satish Dey appeared on behalf of Srikanta Dey being the owner of the premises in question prior to executing deed of gift on 26<sup>th</sup> September, 2018. Vide execution of deed of gift the property in question devolved upon Sitiesh Dey not Satish Dey. Therefore, it appears that added respondent no.6 was not present before the Board of Councillors on the date of taking decision i.e. 31<sup>st</sup> October, 2018. There is nothing on record which goes to show that Sitiesh Das being the added respondent is not the beneficiary to the deed of gift dated 26<sup>th</sup> September, 2018.

In view of aforesaid scenario it can be concluded that the added respondent no.6 was not given opportunity to make deliberation before the Board of Councillors which is required in terms of Section 218 of West Bengal Municipal Act, 1993.

Accordingly, the order of demolition passed by the Board of Councillors dated 31<sup>st</sup> October, 2018 stands set aside.

The Board of Councillors is directed to initiate a proceeding under Section 218 and bring the same to its logical conclusion within a period of

eight weeks from the date of communication of this order after granting opportunity of hearing to the petitioner and added respondent no.6.

The decision to be taken by the Board of Councillors shall be communicated to the parties within one week thereafter.

With the aforesaid direction the writ petition stands disposed of.

However, there shall be no order as to costs.

The original resolution book containing decision of the Board of Councillors dated 31<sup>st</sup> October, 2018 is handed over to the learned advocate representing the Hooghly Chinsurah Municipality.

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.)**