

pp 15.09.2025
Sl. No. 15
Ct No. 3
SG

WPA 4201 of 2023

**Noor Hossain Sk.
Vs
State of West Bengal & Ors.**

Mr. Ranjan Kali.

...for the petitioner

Mr. R.N. Chakraborty.

...for the Municipality

Mr. Satyajit Talukdar,
Mr. Arindam Chatterjee.

...for respondent no. 5

1. The petitioner, by way of the present writ petition, assails the impugned order dated 27.01.2023 passed by the Chairman, Maheshtala Municipality, whereby it was recorded that adequate precautionary measures had been taken to ensure that the petitioner vacated the alleged encroached site and removed his belongings prior to the clearance of the said area for the purpose of laying underground drainage in greater public interest.

2. The case of the petitioner is that he is the owner of a shop room bearing holding no. H5-39/1, New Budge Budge Trunk Road, Maheshtala, Dist. South 24 Parganas. It is the contention of the petitioner that the said premises had been duly mutated in petitioner's name in the record of rights. The petitioner had duly obtained the Certificate of

Enlistment/Trade License with effect from 01.04.2013 from the respondent no. 2 upon compliance of all the formalities. Thereafter, the said Certificate of Enlistment/Trade License has been renewed from time to time upto 2020-2021. The petitioner further contends that he has been duly paid all rents and taxes so assessed by the concerned authority pertinent to the shop room and is not a defaulter in relation to the payment, taxes and rents. However, all of a sudden on 17.11.2021 officials of the respondent-Municipality without adhering to the due process of law has demolished the petitioner's shop to lay underground storm water drainage pipe. Thereafter, the petitioner submitted a representation dated 22.11.2021. Receiving no response, the petitioner approached this Court by way of filing writ petition being WPA 18954 of 2021. Vide order dated 24.02.2022 this Court disposed of the writ petition, directing the competent authority of the respondent-Municipality to decide petitioner's representation and disclose the reasons for such demolition and the procedure followed for the demolition. In compliance, the respondent-Municipality passed an order dated 28.06.2022, disposing of the petitioner's representation on the ground that he failed to produce any ownership document. Aggrieved thereby, the petitioner again approached this Court by

way of a writ petition being WPA 15900 of 2022. The said petition was disposed of vide order dated 23.11.2022 with liberty to the petitioner to approach the appropriate forum if he sought compensation for the demolition of his shop. The petitioner challenged the said dismissal order before the Hon'ble Division bench in MAT 1957 of 2022. By order dated 20.12.2022 the Hon'ble Division Bench allowed the said appeal. The said order reads as follows:-

“We have heard learned Counsel for the parties at length. The Chairman of the Municipality has recorded in his order that the appellant herein could not produce any document in support of his claim of ownership of the shop/land in question. The learned Single Judge refused to interfere with the order since the Municipality cannot decide questions of title. However, the order of the learned Single Judge passed in the earlier round of litigation had directed the Competent Authority in Maheshtala Municipality to pass a reasoned order disclosing the reasons for demolishing the structure in question and the procedure that was followed. This part of the order of the learned Single Judge passed in WPA No.18954 of 2021 has not been complied with by the Chairperson of the Municipality. There was no appeal from the said order which, therefore, attained finality. The Chairperson was obliged to act strictly in terms of the order, which he has not done. Accordingly, we set aside the order of the Chairperson of the Municipality passed on June 28, 2022, since the same is not in conformity with the learned Single Judge's order dated February 24, 2022, passed in WPA No.18954 of 2021 and remand the matter to the Chairperson of the Municipality for passing a fresh reasoned order keeping in mind the 4 2022:CHC-AS:70383- direction of the learned Single Judge in the order dated February 24, 2022. The Chairperson of the Municipality shall pass a reasoned order within four weeks from the date of communication of this order to him. Such order will be communicated to the

appellant within one week from the date of the order. However, we make it clear that this order will not be construed as directing the Chairperson of the Municipality to decide any question of title, which, indeed, the Municipality cannot do. Consequently, the order under appeal is also set aside. It will be open to the appellant to approach the appropriate forum with his claim for compensation, in accordance with law. If any such forum is approached by the appellant with an appropriate application, the same shall be decided in accordance with law without being influenced by any observation in this order. Since we have not called for affidavits, the allegations in the stay application are deemed not to be admitted by the respondents. M.A.T. No.1957 of 2022 is, accordingly, disposed of along with IA CAN 1 of 2022.”

3. In compliance of the aforesaid order the respondent passed the impugned order dated 27.01.2023 and the same is under challenge in the present proceeding. Learned Counsel for the petitioner contends that the impugned order dated 27.01.2023 is cryptic, non-speaking and passed in contravention of the directions of the Hon’ble Division Bench’s order dated 20.12.2022. It is argued that there have been a complete non-application of mind and the order has been passed mechanically.

4. Per contra, learned Counsel for the respondent-Municipality submits that petitioner is an encroacher on government land and was served upon with sufficient notice to vacate the premises. It is contended by the learned Counsel for the Municipality that the land was urgently required for laying down pipelines for the underground drainage system and the

respondent was compelled to remove the petitioner and other similarly situated persons in larger public interest.

5. This Court has carefully heard the submissions advanced by the learned Counsel for both the parties and has meticulously examined the documents placed on record including the impugned order dated 27.01.2023 and the relevant correspondences preceding it.

6. The central issue that falls for determination is whether the respondent-Municipality has duly complied with the direction issued by the Hon'ble Division Bench in MAT 1957 of 2022, particularly in regard to providing a reasoned and speaking order addressing the petitioner's grievances, and whether the action of demolition was justified and proportionate in law.

7. A perusal of the impugned order dated 27.01.2023 shows that the respondent-Municipality has set out the background necessitating the passing of the order removing the encroachment including the petitioner's shop room. The order states that the drainage system on both the flanks of the Budge Budge Trunk Road was in a dilapidated and dysfunctional state. During the monsoon season the road and the adjoining areas reportedly remain

waterlogged for extended periods, thereby causing serious hardships to residents and commuter alike. To remedy the same, the Municipality formulated a comprehensive scheme to construct an underground drainage system with the objective of permanently resolving the storm water accumulation problem. In implementation of this project, it was found essential to lay high diameter pipelines along with both flanks of the road for effective drainage into the nearby irrigational canal. However, the proposed alignment of the pipe was obstructed by series of unauthorized construction and encroachment, including shops and structures, one of which was claimed by the petitioner. Accordingly, a joint inspection and measurement exercise was taken and the extent of encroachment was marked on the site in the presence of the local residents, shop owners and other stakeholders. The respondent states that due opportunity was given to all the persons affected by the project to vacate the said spots voluntarily. Multiple public announcements were made through loud speakers in the affected areas requesting the occupants of encroached portion to remove their belongings. Posters and notices were affixed prominently in the locality to ensure widespread awareness of the proposed action. Despite such efforts, when the occupants including the petitioner, failed to

vacate the said premises within the stipulated period, the Municipality proceeded to remove the encroachments as per the implementation schedule and in the larger public interest for establishing a public infrastructure project. The respondent has thus sought to justify the removal action on the ground of public necessity, urgency and need to implement a large scale drainage development project with a view to safeguarding and advancing the greater public interest.

8. This Court is of the considered view that the respondent-Municipality, through the impugned order dated 27.01.2023, has sufficiently articulated the reasons behind the demolition of petitioner's structure. The order is not devoid of reasoning and cannot be said to have been passed mechanically without application of mind. It is further observed that the said order had been passed in due compliance with and keeping in mind, the order of the Hon'ble Division Bench in MAT 1957 of 2022. On the contrary, the order reflects a structured explanation founded on administrative necessity, civic urgency and procedural diligence. Moreover, the Hon'ble Division Bench while disposing of MAT 1957 of 2022 had categorically observed that the question of title or ownership claimed by the petitioner could not be adjudicated by the municipal authority. It was further clarified that if

the petitioner seeks compensation or damages for the alleged wrongful demolition, he is at liberty to approach the appropriate forum having jurisdiction in that regard. Therefore, the Municipality is not required to adjudicate any disputed question of facts regarding title but is merely obligated to disclose that the rationale and the process adopted for demolition has to be fair, which in the considered view of this Court, appears to have been done in the present case vide impugned order dated 27.01.2023.

9. It is a settled proposition of law that in matters involving the execution of essential public infrastructure projects, particularly those relating to sanitation, drainage and civil health, the rights of individuals must be balanced against the larger public interest.

10. In light of the above, this Court finds no manifest illegality, procedural impropriety or violation of the principles of natural justice in the passing of the impugned order dated 27.01.2023. There is no ground to interfere with the said order. Accordingly, the present writ petition is dismissed.

(Gaurang Kanth, J.)