

Court No. 6
(265719)

16.09.2025
(AD 9)
(S. Banerjee)

CO 712 of 2024

Sri Subhas Chandra Dutta
Vs.
The Chairman & Board of Councillors & Anr.

Mr. Samirul Sardar
Mr. Somnath Das
...for the petitioner
Mr. Subhabrata Das
Mr. Mrinal Kanti Das
Mr. Arindam Banerjee
...for the opposite party no. 1
Mr. Sankar Biswas
Mr. Debnath Mahata
Ms. Ananya Adhikary
...for the opposite party no. 2

This application under Article 227 of the Constitution of India is at the instance of the owner of an impugned construction and is directed against a judgment and order dated January 8, 2024 passed by the learned Civil Judge (Jr. Division), 2nd Court at Barrackpore in Municipal Appeal No. 3 of 2023. By the judgment and order impugned, the municipal appeal was dismissed.

Learned advocate appearing for the petitioner submits that the Board of Councillors passed an order wherein it has been stated that the double storied building is measuring approximately (5.40 X 4.60) sqm with 1 room and 1 bathroom at the first

floor and the covered area at the ground floor without any walls. But the order communicated by the Chairman of the said municipality under the heading of 'Remarks' states that the double storied building measures approximately (5.50 x 4.40) sqm. He further submits that since there is a dispute as to the measurement of the impugned construction, the order impugned is liable to be set aside and the appeal should be directed to be heard afresh.

Mr. Das, learned advocate appearing for the municipality submits that the building in question was inspected in the presence of the respective parties and upon giving an opportunity of hearing to the respective parties, the Board of Councillors of the municipality passed an order of demolition dated February 20, 2023. He submits that there is a typographical error in recording the measurement of the building in the order of the Board of Councillors, as it would be evident from the inspection report that the measurement of the double storied building is (5.50 x 4.60) sqm.

Learned advocate appearing for the private respondent submits that the construction is an illegal and unauthorized one and, therefore, the competent authority of the municipality were justified in passing the order of demolition.

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

When this matter was taken up on August 26, 2025, this court passed an order of stay of operation of the order of demolition as well as the judgment and order dated January 8, 2024 passed in Municipal Appeal No. 3 of 2023 on the ground that the municipality failed to produce the order passed by its Board of Councillors.

However, on the September 10, 2025, the learned advocate appearing for the municipality produced the copy of the order dated February 20, 2023 passed by the Board of Councillors, North Barrackpore Municipality. A copy of such order was directed to be handed over to the learned advocate appearing for the petitioner.

The learned advocate appearing for the petitioner draws the attention of the court to the fact that in the order passed by the Board of Councillors, the measurement of the impugned construction was recorded as (5.50 x 4.60) sqm.

The inspection report, was signed by the respective parties. This court, therefore, holds that there is a typographical error in the recording of measurement of the structure in Board of Councillors'

orders. Such error cannot create any special right in favour of the petitioner and therefore, cannot be a ground for setting aside the order of demolition.

Record reveals that alleging inaction on the part of the municipality in not considering the complaint made by the private respondent with regard to the illegal construction being carried on by the petitioner on the properties in question, the private respondent approached this court by filing a writ petition in WPA 20292 of 2022. A coordinate bench by an order dated November 21, 2022 disposed of the writ petition by directing the Board of Councillors, North Barrackpore Municipality to consider and dispose of the objection made by the writ petitioner/private respondent herein before the Chairman on September 13, 2022 strictly in accordance with law after giving an opportunity of hearing to all the necessary parties and to pass a reasoned order within the time limit as indicated therein. It was further observed therein that in the event the municipality is of the opinion that the construction has been made either in violation of the sanction plan or devoid of sanction plan, then necessary steps shall be taken to deal with the unauthorized construction in accordance with law.

Pursuant to the said order an inspection was carried out by the officers of the municipality. It is not

in dispute that such inspection was carried out in the presence of the respective parties and the parties have also put their signatures on the field note which was prepared by the inspection team. From the field note which was produced by the municipality, it appears that double storied building is measuring approximately (5.50 x 4.40) sqm with 1 room 1 bathroom on first floor and the covered area on the ground floor without any wall, had no sanction from the municipality.

It further appears from the records that the notice was served upon the respective parties directing them to appear at the hearing to be conducted by the Board of Councillors. The parties were also present at the time of hearing.

In the order passed by the Board of Councillors it has been recorded that the persons responsible did not refute that he has made illegal construction. Thus the petitioner admitted to have made illegal construction. The order of the Board of Councillors was challenged by the petitioner in Municipal Appeal No. 3 of 2023. The learned Civil Judge (Jr. Division), 2nd Court at Barrackpore, after considering the materials on record, observed that the proceedings were carried out by the municipality in accordance with law. The learned judge also recorded that the

petitioner failed to produce any sanction plan application in respect of the suit property. The learned judge opined that the demolition order has been passed by the concerned municipality in respect of the double storied structure measuring about (5.50 x 4.60) sqm. The learned advocate appearing for the petitioner in course of hearing of their civil revision application also could not produce any sanction plan in respect of the impugned construction. Since the construction was made without any sanction plan, the same is an illegal and unauthorized one liable to be demolished. The Municipality was right in passing the order of demolition.

The impugned order does not suffer from any infirmity warranting interference under Article 227 of the Constitution of India.

For all the reasons, CO 712 of 2024 stands dismissed.

(Hiranmay Bhattacharyya, J.)