

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

**RESERVED ON: 11.08.2025
DELIVERED ON: 12.09.2025**

**PRESENT:
THE HON'BLE MR. JUSTICE GAURANG KANTH**

WPA 7879 OF 2024

SMT. KANIKA CHOWDHURY

VERSUS

BIDHANNAGAR MUNICIPAL CORPORATION & ORS.

Appearance:-

**Mr. Utpal Maitra, Adv.
Mr. Prabir Adhya, Adv.
Ms. Madhumanti Chakraborty, Adv.**

..... **For the Petitioner**

**Mr. Sirsanya Bandopadhyay, Adv.
Mr. Arka Kumar Nag, Adv.
Mr. Tirthankar Dey, Adv.**

..... **for the BMC**

**Mr. Mukteswar Maity, Adv.
Ms. Manika Sarkar, Adv.**

..... **for respondent no. 8**

JUDGMENT

Gaurang Kanth, J. :-

- 1.** The Petitioner, by way of the present writ petition, seeks to challenge the demolition order dated 30.01.2024 issued by the Commissioner, Bidhannagar Municipality, whereby the Petitioner along with Respondent No. 8 was directed to demolish the premises situated at 13, Sukanta Park, P.O. Prafulla Kanan (Krishnapur), P.S. Baguiati, Kolkata-700101, West Bengal, from the plinth level, failing which the said demolition would be carried out by the Respondent Municipality at their own instance.

2. Facts leading to the present writ petition are as follows:
3. Late Shri Sachindralal Chowdhury, father of Respondent No. 8 and father-in-law of the Petitioner, purchased a plot of land admeasuring 8 cottahs 3 chittacks situated at premises no. 13, Sukanta Park, P.O. Prafulla Kanan (Krishnapur), P.S. Baguiati, Kolkata – 700101, West Bengal. Out of the said plot, he constructed a residential house over approximately 5 cottahs of land between 1961-1970. Subsequently, in 1990, two additional rooms were constructed on the first floor of the said building. During his lifetime, Late Shri Sachindralal Chowdhury resided in the said premises along with his wife, one son, and two daughters.
4. Shri Sachindralal Chowdhury died intestate in the year 1992, whereupon the said property devolved upon his legal heirs, namely his wife and three children. In the year 1997, the widow of Late Shri Chowdhury relinquished her undivided one-fourth share in favour of her daughter, Smt. Rupa Chowdhury (Respondent No. 8 herein). Thereafter, in the year 2008, Ms. Kumkum Chowdhury, another daughter of Late Shri Chowdhury, executed a registered gift deed dated 11.11.2008, relinquishing her share in favour of her brother, Shri Anjan Chowdhury. Upon the demise of Shri Anjan Chowdhury, his wife, i.e., the present Petitioner, became the absolute owner of his share in the property. Consequently, the Petitioner and Respondent No. 8 became co-owners, each holding an undivided 50% share in the said premises.
5. Both the Petitioner and Respondent No. 8 continued to reside in the said premises. In 2009, during his lifetime, the Petitioner's husband undertook certain repair works on the roof of the building. Respondent No. 8 lodged a written complaint dated 01.04.2009 before the Commissioner of the then

Respondent Municipality, alleging encroachment upon common and undivided areas on the first floor. As the said grievance was not redressed, Respondent No. 8 initiated writ proceedings being WP No. 7583(W) of 2009 and WP No. 9506(W) of 2009. By order dated 28.07.2010, this Hon'ble Court disposed of the said writ petitions by directing the Municipality to decide the pending representation of Respondent No. 8. In compliance thereof, the Chairman of the Municipality passed a speaking order dated 10.05.2011, holding that the dispute between the parties was of a civil nature and could only be adjudicated by a competent civil court. Aggrieved, Respondent No. 8 challenged the said order by filing WP No. 12686(W) of 2011. This Hon'ble Court, by order dated 09.04.2013, set aside the order dated 10.05.2011 and directed the Board of Councillors to conduct an enquiry and hear the parties under Section 218 of the West Bengal Municipal Corporation Act, 2006.

6. Meanwhile, Bidhannagar Municipal Corporation and Rajarhat Gopalpur Municipality were amalgamated, and the newly constituted Bidhannagar Municipal Corporation stepped into their shoes. For alleged non-compliance with this Hon'ble Court's order dated 09.04.2013 in WP No. 12686(W) of 2011, Respondent No. 8 initiated contempt proceedings being CPAN 520/2014. Pursuant thereto, the Bidhannagar Municipal Corporation, after affording an opportunity of personal hearing to both the parties, passed a speaking order dated 18.01.2017 directing the Petitioner to demolish the alleged unauthorised construction encroaching upon Respondent No. 8's portion, and instructed the Executive Engineer to ensure compliance.

7. The Petitioner preferred a statutory appeal before the Mayor against the said order dated 18.01.2017. During the pendency of the appeal, the Executive Engineer of the Corporation issued a notice dated 21.06.2018 proposing demolition in execution of the order dated 18.01.2017. Aggrieved thereby, the Petitioner filed WP No. 10109(W) of 2018. By order dated 28.06.2018, this Hon'ble Court was pleased to quash the said notice dated 21.06.2018 and directed the appellate authority to dispose of the statutory appeal expeditiously, preferably within four weeks.
8. Subsequently, by order dated 06.01.2023, this Hon'ble Court disposed of CPAN 520/2014. In compliance with the said order, Respondent No. 8 filed WPA 7777/2023 seeking implementation of the demolition order dated 18.01.2017. After hearing the parties, this Hon'ble Court, by order dated 17.05.2023, set aside the order dated 18.01.2017 and the corrigendum dated 19.01.2017, while keeping open the issue of unauthorised construction for fresh consideration by the Municipal Commissioner.
9. Thereafter, upon granting personal hearing to both parties, the Municipal Commissioner, Bidhannagar Municipal Corporation, passed the impugned order dated 31.01.2024 holding that the entire construction at the premises in question was unauthorised, and directed the Petitioner and Respondent No. 8 to carry out demolition of the said structure within four weeks, failing which the Corporation would proceed with demolition.
10. Being aggrieved by the demolition order dated 31.01.2024, the Petitioner has preferred the present writ petition.

Submission on behalf of the Petitioner

11. Learned Counsel for the Petitioner submits that the Respondent Corporation has passed the impugned order dated 31.01.2024 without

proper application of mind and without appreciating the nature of the dispute between the parties.

- 12.** It is submitted that the building in question is an old structure, originally constructed between 1961-1970 by the father-in-law of the Petitioner. Thereafter, in 1990, two rooms were additionally constructed on the first floor. Thus, the construction precedes the enactment and coming into force of the West Bengal Municipal Corporation Act, 2006. No further construction has been made subsequent thereto. The father-in-law of the Petitioner had carried out the construction in accordance with the building regulations applicable at the relevant time. The Petitioner, being only the daughter-in-law, is not in possession of the sanctioned building plan. However, mere non-availability of the sanctioned plan cannot lead to the conclusion that the entire building is unauthorised.
- 13.** Learned Counsel further submits that the dispute between the Petitioner and the private Respondent essentially pertains to allegations of mutual encroachment over each other's undivided share. It is not the case of either party that the entire structure is unauthorised. In fact, both the Petitioner and Respondent No. 5 are residing in the said premises.
- 14.** It is further contended that the Municipal Commissioner acted mechanically on the basis of the report of the Executive Engineer, without appreciating that the building is nearly fifty years old, if not more. The Commissioner failed to take into consideration the age of the structure as well as the absence of any substantial deviation from the building rules. A mere inability on the part of the Petitioner to produce the sanctioned plan cannot be a valid ground for holding that the entire construction is unauthorised.

- 15.** On the strength of the aforesaid submissions, learned Counsel for the Petitioner prays for setting aside of the impugned order dated 31.01.2024 passed by the Municipal Commissioner, Bidhannagar Municipal Corporation.

Submission on behalf of the Respondent Corporation

- 16.** Learned Counsel for the Respondent Corporation submits that this Court, vide order dated 17.05.2023 in WPA 7777/2023, directed the Corporation to undertake a fresh proceeding for examining the issue of unauthorised construction at the premises in question, after affording an opportunity of hearing to both the parties. Pursuant thereto, a site inspection was conducted on 16.10.2023 in the presence of all concerned parties. During the inspection, it was observed that while the ground floor constituted an old structure, the upper floor appeared to be of comparatively recent construction. It was further found that no record of any sanctioned building plan was available either for the original structure or for the subsequently constructed portions. Both the Petitioner and the private Respondent failed to produce any sanctioned plan or other documentary evidence establishing the legality or age of the construction. Consequently, in exercise of powers under Sections 262B and 265 of the West Bengal Municipal Corporation Act, 2006, the impugned order dated 31.01.2024 was passed.
- 17.** It is further submitted that the said order was passed after affording adequate opportunity of hearing to both parties, and therefore, the principles of natural justice have been duly complied with.
- 18.** Learned Counsel for the Respondent Corporation contends that the construction in question is wholly illegal, unauthorised, and in gross

violation of municipal laws. A structure erected without any sanctioned plan cannot confer any legal right upon the writ Petitioner. Since the entire building was raised without obtaining any sanctioned plan, the same is unauthorised in its entirety.

- 19.** In view of the aforesaid submissions, Learned Counsel for the Respondent prays for dismissal of the present writ petition.

Submission on behalf of the Respondent No. 8

- 20.** Learned Counsel for the private Respondent No. 5 admits that the ground floor of the premises was constructed by her late father and is an old structure. However, it is contended that the upper floor was constructed by the late husband of the Petitioner around the year 2008, against which the private Respondent had lodged objections. She specifically denies that she is residing under the same roof with the Petitioner and submits that she is presently occupying a dilapidated one-room accommodation situated on the western side of the building. It is her categorical submission that the construction was raised without any sanctioned building plan and is, therefore, unauthorised in nature. Accordingly, the Respondent Corporation has rightly passed the impugned demolition order dated 31.01.2024.

Legal Analysis

- 21.** This Court has heard the submissions advanced by the learned Counsel appearing for the respective parties and has carefully examined the documents placed on record.
- 22.** The sole issue that falls for consideration before this Court is whether the structure standing on the premises in question can be held to be legal and

authorised, or whether the same is an unauthorised construction liable for demolition under law.

- 23.** It is pertinent to note that this Court, while setting aside the earlier order dated 18.01.2017 passed by the Commissioner, Bidhannagar Municipality, had granted liberty to the Municipal Commissioner to decide afresh the question of unauthorised construction, after affording due opportunity of hearing to both sides. Pursuant thereto, hearings were conducted on 08.07.2023, 29.09.2023, and 09.12.2023, and site inspections were also undertaken in the presence of both the parties. The inspection revealed that while the ground floor constituted an old structure, certain portions of the first floor appeared to be of subsequent construction. Despite sufficient opportunity, neither the Petitioner nor the private Respondent could produce any sanctioned building plan issued by the then Gram Panchayat, Rajarhat-Gopalpur Municipality, or the Bidhannagar Municipal Corporation. On such basis, the Commissioner concluded that the structure in its entirety was unauthorised.
- 24.** Section 266 of the West Bengal Municipal Corporation Act, 2006, expressly empowers the Municipal Commissioner to direct demolition of any building or work erected without sanction, or in deviation of a sanctioned plan, or in contravention of the Act, rules, or bye-laws, after due notice and opportunity of hearing. In the instant case, the Petitioner failed to produce any sanctioned plan relating to the premises, either in respect of the original construction or the alleged subsequent additions.
- 25.** The principal defence of the Petitioner is that the construction on the ground floor was raised by her father-in-law during the period 1961–1970, and, therefore, ought not to be treated as unauthorised. However, this

contention cannot be sustained. As consistently held by the Hon'ble Supreme Court and various High Courts, a construction raised without prior sanction remains unauthorised in the eye of law, irrespective of the length of its existence. Mere passage of time does not confer legality upon an otherwise illegal act. Longevity of a construction cannot legitimise what was illegal from inception.

26. In light of the above discussion, this Court finds no infirmity, perversity, or jurisdictional error in the order dated 31.01.2024 passed by the Municipal Commissioner, Bidhannagar Municipal Corporation. The impugned order is a reasoned one, passed after affording adequate opportunity of hearing to both the parties and in conformity with Section 266 of the West Bengal Municipal Corporation Act, 2006. The settled legal position is that once a construction is found to be without sanction, the Municipal Commissioner is empowered, and indeed duty-bound, to order demolition. Judicial review under Article 226 is confined to examining the decision making process and does not extend to re-appreciating factual findings of municipal authorities in demolition matters, unless such findings suffer from manifest illegality, arbitrariness, or breach of natural justice. In the present case, since due notice, inspection, and hearings were afforded and the Petitioner failed to produce any sanctioned plan, this Court does not find any ground to interfere with the impugned order.

27. Accordingly, the writ petition fails and stands dismissed.

(Gaurang Kanth, J.)