

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

**HEARD ON: 15.07.2025
DELIVERED ON: 15.07.2025**

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

WPA 15038 of 2024

MD. SALIM ANSARI & ANR.

VERSUS

THE KAMARHATI MUNICIPALITY & ORS.

Appearance:-

**Mr. Kushal Chatterjee, Adv.
Mr. Oishik Chatterjee, Adv.**

.....For the Petitioners

Mr. Sankha Subhra Ray, Adv.

.....for Kamarhati municipality

JUDGMENT

Gaurang Kanth, J. :-

1. Affidavit-of-service is taken on record.
2. The petitioners have preferred the present writ petition being aggrieved by the impugned order dated 15.05.2024 issued by the Chairman of the respondent-Kamarhati Municipality, whereby it was informed to the petitioners that the Board of Councillors in its meeting dated 31.07.2023, had passed a resolution to cancel the building plan sanctioned under the "Housing For All" Scheme in respect of premises no. 18/A, Rojan Bagan, Kamarhati, on the ground that the petitioner had deviated from the sanctioned building plan and also directed

the petitioners to refund a sum of Rs.1,40,000/- which has been disbursed to him under the “Pradhan Mantri Awas Yojna” Scheme.

3. Learned Counsel for the petitioner submits that he was constructing a house at the aforementioned site under the “Housing For All” Scheme, which is a Central Government initiative under the “Pradhan Mantri Awas Yojna”. The building plan had been duly sanctioned by the respondent-Municipality. While the construction was ongoing, the petitioner was served with a work stop notice dated 15.12.2022. In response, the petitioner submitted a representation dated 17.01.2023. However, no reply was received from the respondent authorities.. Subsequently, the petitioners approached this Court by filing writ petition being WPA 4712 of 2023. Vide order dated 19.04.2023, this Court disposed of the said writ petition with a direction upon the respondent authority to pass a speaking order after affording an opportunity of hearing to the petitioners. Despite such direction no steps were taken by the respondent authorities in compliance with the said order. Consequently, the petitioners were constrained to file a contempt petition being CPAN No. 1218 of 2023. In course of the said proceeding, the respondent produced the order dated 15.05.2024, whereby the petitioners were informed that the Board of Councillors had resolved to cancel the sanctioned plan and further directed the petitioners to refund the sum of Rs.1,40,000/-, which had been disbursed under the said Scheme.

4. Learned Counsel for the petitioners submits that even assuming the ground for cancellation is considered to be valid, the petitioners had merely undertaken the construction of the pillars at the said site and no further construction has been done. It is the submission of the learned Counsel for

the petitioners that on the ground of alleged deviation, the sanctioned plan cannot be cancelled. Even if there was any deviation in the said construction, no notice was ever served upon the petitioners nor were they informed of the nature and extent of such deviation alleged to have occurred during the course of the construction. Learned Counsel for the petitioners contends that since the construction was undertaken under the “Housing For All” Scheme, the competent authority to cancel or recall the plan is the Central Sanctioning and Monitoring Committee (CSMC). He contends that the municipality had no jurisdiction either to cancel the sanctioned plan or to demand refund the disbursed sum under the said Scheme.

5. Learned Counsel for the respondent submits that vide impugned order dated 15.05.2024, the Chairman has communicated the decision of the Board of Councillors. He further states that the counsel for the petitioners was present during the meeting and he was duly communicated of the decision. Learned Counsel for the respondent further contends that since the sanctioning authority is the respondent-Municipality, they are well within their rights to cancel the sanctioned plan.
6. Learned Counsel for the respondent-Municipality admits that that no notice of deviation was served upon the petitioners. Moreover, he has failed to point out any specific provision or statutory authority under which the sanctioned plan can be cancelled solely on the ground of deviation.
7. This Court has heard the arguments advanced by the learned Counsel for the parties and has perused the materials placed on record.
8. It has been rightly pointed out by the learned Counsel for the petitioner that the construction in question has been carried out under the “Housing For All”

Scheme. Upon a plain reading of the impugned order and the resolution of the Board of Councillors, it is evident that the allegation of deviation from the sanctioned plan, has been made without any specificity as to the nature or extent of such deviation. The petitioner has placed on record photographs of the alleged unauthorized construction which merely shows the presence of pillars at the site. Even assuming that there has been some deviation, cancellation of the entire sanctioned plan is neither warranted nor justified in law. At most, the extent of the deviation should be identified and appropriate corrective measures may be required.

9. Upon a careful perusal of the impugned order dated 15.05.2024, this Court is of the considered view that the said order reflects complete non-application of mind and is vitiated by arbitrariness. The impugned decision neither specifies the nature nor the extent of the alleged deviation from the sanctioned building plan.
10. It is settled principle of administrative law that any action having civil consequences must be preceded by due adherence to the principle of natural justice, including affording the affected parties an opportunity of being heard. In the instant case, the impugned order is, thus, not only procedurally flawed but also substantively unsustainable. The cancellation of the sanctioned building plan without identifying the specific deviations and without affording the petitioners an opportunity to rectify the same is disproportionate and contrary to the established norms and procedure under the applicable municipal law.
11. Hence, the impugned order is liable to be quashed. Consequently, the matter is remanded back to the Board of Councillors of the Kamarhati Municipality

for reconsideration of the issue, strictly in accordance with law. While doing so, the Board shall specify the nature and extent of deviation from the sanctioned plan. The respondent authority shall be at liberty to conduct a fresh joint inspection of the premises in the presence of the petitioner. Upon such inspection, if any deviation is found, the respondent authority shall duly identify the nature and extent of such deviation and the petitioners shall be afforded an opportunity to rectify the said deviation in accordance with law. Before passing any order for cancellation of the sanctioned plan, the respondent authority shall also afford a reasonable opportunity of hearing to the petitioners as well as other relevant stakeholders.

12. With the above direction, the present writ petition is disposed of.
13. Since no affidavits have been filed by the respondents, the allegations made in the writ petition shall not be deemed to have been admitted.
14. There shall be no order as to costs.
15. Let urgent Photostat certified copy of this order, if applied for, be supplied to the parties on usual undertaking.

(Gaurang Kanth, J.)