

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

Present:

The Hon'ble **Justice Kausik Chanda**

W.P.A. No.15851 of 2024

With

I.A. No. C.A.N. 1 of 2024

**THE DURGAPUR EX-SERVICEMEN'S CO-OPERATIVE HOUSING
SOCIETY LTD. (DECHSL) AND ANOTHER
-VERSUS-**

THE STATE OF WEST BENGAL AND OTHERS

For the petitioners : Mr. Tanmoy Mukherjee, Adv.,
Ms. Debanwita Pramanik, Adv.,
Mr. K. Raihan Ahmed, Adv.

For DMC : Mr. Sandipan Banerjee, Adv.,
Mr. Arijeet Bhattacharjee, Adv.,
Ms. Utsa Dutta, Adv.

For ADDA : Mr. Sharanya Chatterjee, Adv.,
Mr. A. Ghosh, Adv.

For Special Officer : Mr. Ankit Surekha, Adv.,
Mr. Biplab Das, Adv.

For Co-operative Election Commission. : Mr. Srijan Nayak, Adv.,
Ms. Rituparna Maitra, Adv.

For the State : Mr. K. J. Yusuf, Adv.,
Mr. Saurav Chaudhuri, Adv.

For Respondent No.6 : Mr. Saheb Banerjee, Adv.

Hearing concluded on : 16.01.2025

Judgment on : 21.01.2025

Kausik Chanda, J.:-

Interestingly, although the controversy raised in this writ petition concerns whether the West Bengal Town and Country (Planning and Development) Act, 1979 (in short 'Act of 1979') or the West Bengal Municipal Corporation Act, 2006, should prevail when an unauthorised construction falls within the jurisdiction of both Acts, this issue has never been explicitly argued or addressed by the parties at any point. This writ petition is preceded by a series of litigations with a complex history. Before addressing the issue, it is necessary to consider the background facts that led to the filing of this writ petition.

2. A land measuring about 28.25 acres at Amarabti Defence Colony, Durgapur was leased out for the construction of a residential building for the petitioners. The relevant land is situated within the concurrent

jurisdiction of Asansol Durgapur Development Authority (in short, 'ADDA') and Durgapur Municipal Corporation (in short, 'DMC'). Later, a master plan for utilisation of the land was approved by ADDA in the year 1992, where 18.19 acres was earmarked for residential purposes and the rest area was proposed for shopping centre, office, parks, playground, school and community centre, etc.

3. Respondent no. 6 who claims to be a member of the Society filed WPA 1024 of 2024 before this Court alleging unauthorised construction by the petitioners.

4. It was alleged that the petitioners engaged in construction of some godowns and garages for utilisation of a part of the land without any intimation or prior permission of ADDA, violating the relevant clause of the lease deed.

5. The said writ petition was disposed of by a learned Single Judge of this Court on May 25, 2021, directing ADDA to conclude the proceedings related to unauthorised construction in accordance with law. It was further observed that the order should not prevent DMC from proceeding against the society or any person for violation of any statute.

6. The petitioners, thereafter, filed an application before DMC for post-facto approval for the construction of a boundary wall including the garages/godowns by a letter dated October 2, 2021.

7. The Commissioner of DMC, thereafter, informed the Chief Executive Officer of ADDA by a communication dated October 8, 2021, that an application for regularisation of post-facto approval has been submitted by the petitioners. ADDA by a letter dated April 28, 2023, addressed to the Department of Urban Development & Municipal Affairs (in short, 'UDMA') disclosed that the Secretary, Durgapur Ex-Servicemen's Co-operative Society submitted a proposal for (i) approval for revised Master Plan, (ii) Permission for the construction of Sainik Bhawan for Welfare of Ex-Servicemen (iii) Amendment of lease deed from "Residential to Residential cum Commercial" and requested UDMA for approval of the revised master plan and amendment of lease deed from "Residential to Residential cum Commercial" upon realisation of prescribed charges.

8. Thereafter, the commissioner of DMC by a communication dated August 24, 2022, directed the petitioners to self-demolish the unauthorised construction.

9. Challenging the said self-demolition order dated August 24, 2022, the petitioners filed WPA 20916/2022 before this Court, which was disposed of by a learned single Judge of this Court by an order dated September 15, 2022, directing the Commissioner, DMC to take a decision with regard to the application made by the petitioners for grant of post-facto approval of the construction made by the petitioners, in accordance with law.

10. Respondent no. 6, however, filed WPA 28017/2022 (Binoy Majumder vs. The State of West Bengal & Ors.) for implementation of the said self demolition order dated August 24, 2022. In the said writ petition, an interim order was passed on June 21, 2023, the relevant segment of the order is quoted below:

“It appears that the department of Urban Development and the ADDA are required to act in tandem for taking a decision with regard to the revision of the master plan.

The aforesaid departments are hereby directed to take necessary steps in the matter, after giving a 3 reasonable opportunity of hearing to all the necessary parties. A decision shall be taken at the earliest but positively within eight weeks from the date of communication of this order.

Let the writ petition be listed once again for consideration on September 20, 2023 marked “For Orders”.

11. In compliance with the said order dated June 21, 2023, UDMA, called for a hearing of the parties and by an order dated August 17, 2023, disposed of the matter with the following observations:

“9.

b. A prayer under Section 53(3) of West Bengal Town and Country (Planning and Development) Act, 1979 is applicable only when a notice under Section 53(1) of the said Act, 1979 has been served upon. Hence the prayer of the Durgapur Ex-servicemen's Cooperative Housing Society Limited under Section 53(3) of the said Act of 1979 made before Asansol Durgapur Development Authority against the notice issued by Durgapur Municipal Corporation is not tenable in the eyes of law.

c. ...

From the above provisions of West Bengal Municipal Corporation Act, 2006 it appears that Durgapur Municipal Corporation has the authority to deal with the issue of inspection and taking appropriate action following due process of law with regard to alleged unauthorized construction.

d. Master Plan for utilisation of the land allotted in favour of Durgapur Ex-Servicemen's Co-Operative Housing Colony Society Ltd. was approved by the Office of Asansol Durgapur Development Authority on 23.05.1992. State Government does neither give approval of any Master Plan nor gives approval for amendment of any Master Plan.

In view of the above, it is hereby concluded that -

i. Durgapur Municipal Corporation is hereby directed to act in accordance with extant statutory provisions of West Bengal Municipal Corporation Act, 2006, Government Notifications, rules etc with regard to unauthorized construction subject to order of Hon'ble High Court, if any.

ii. There is no legal provision for approval of Master Plan for each and every lessee or its amendment by State Government. State Government approves Land Use Map and Land Register (LUMR) under Section 28 of the said Act of 1979 and Land Use and Development Control Plan (LUDCP) under Section 44 of the said Act of 1979 Therefore, Asansol Durgapur Development Authority is also directed to take appropriate action as per provisions laid down in West Bengal Town and Country (Planning and Development) Act, 1979.”

12. Thereafter WPA 28017/2022 was disposed of on September 20, 2023, with the following observations by the learned single Judge.

“The Asansol Durgapur Development Authority is directed to take steps in accordance with the direction passed by the Urban Development & Municipal Affairs Department.

The Durgapur Municipal Corporation and ADDA are directed to act in accordance with the direction passed by the Department at the earliest but positively within a period of eight weeks from the date of communication of this order.

The writ petition stands disposed of.”

13. In compliance with the said order dated September 20, 2023, ADDA took up the matter for hearing and after giving due notice to all concerned and passed the following orders on November 21, 2023.

“It is clear from the above observation made by the Department of U.D. & M.A. that the applications of the Co-operative society before ADDA, in effect seeking post fact approval of the constructions already raised, are not tenable and accordingly nothing remains for the ADDA to decide in respect of those applications as far the approval for structures already raised is concerned.

It is hereby made clear that there will be no revision in the Master Plan, save and except the fact that any prayer seeking permission, if made, will be considered in future in accordance with the provisions, which would commensurate with the guidelines framed by the Department of U.D. & M.A., State of West Bengal vide para (ii) page-5 of the Reasoned Order dated 16/17-08-2023 passed by the aforesaid Department.”

14. Thereafter, the Corporation again revived the original order of demolition dated August 24, 2022, with a subsequent order dated January 18, 2024.

15. Challenging the said order, the writ petitioners again filed WPA 9212 of 2024 (*Durgapur Ex-Servicemen’s Co-operative Housing Society Limited & Anr. Vs. The State of West Bengal & Ors.*).

16. The learned Single Judge duly considered the orders passed by UDMA, dated August 17, 2023, as well as the order dated November 21, 2023, passed by ADDA, and dismissed the writ petition on April 10, 2024. The relevant part of the said judgment is quoted below:

“

Upon hearing the submission made on behalf of all the parties, it appears that, admittedly, there is no provision in law for regularizing the constructions already made or to grant post facto approval of the constructions made.

There is already a Master Plan according to which the constructions were raised. No further addition, alteration could have been made in the said place without approval or sanction from the competent authority. In fact, there is hardly any scope for revision of the Master Plan.

.....

In the instant case, the garages/warehouse/store rooms have been constructed. It hardly matters whether there is a pucca roof over the said construction. In the absence of any legal provision relying upon which the post facto approval can be sanctioned, the court does not find any error with the order passed by the Commissioner of the Corporation.

.....”

17. The petitioners preferred an appeal, MAT 782/2024, against the order which was dismissed by the Division Bench of this Court on April 29, 2024, with the following observation:

“

We have considered the rival contentions of the parties. We are of the view that the learned Single Judge has not committed any error in passing the

order impugned. Reckless people, who raise constructions without obtaining prior permission from the Competent Authority, deserve no indulgence from Court and in particular, a Court of equity, which the Writ Court is. It is not in dispute that the impugned constructions in the present case are not supported by any sanctioned plan. No sympathy should be shown to people who indulge in such illegal activities.

.....”

18. The petitioners have filed this writ petition after the dismissal order dated April 29, 2024, challenging the order of UDMA dated August 17, 2023, and the order dated November 21, 2023, passed by ADDA.

19. It has been submitted by the learned advocate appearing for the petitioners that the prayer for regularisation of the unauthorised construction was never considered by any of the authorities on merit and unless such prayer is considered on merit, the demolition order passed by DMC should not be implemented.

20. On behalf of ADDA, it has been submitted that it is bound by the direction of UDMA, which has categorically observed that the construction in question cannot be regularised in terms of Section 53 of the Act of 1979. Therefore, ADDA could not consider the said application on merit.

21. Learned advocate appearing for DMC, on the other hand, acknowledges the primacy of ADDA in a ‘township’ within the jurisdiction of the Development Authority under the Act of 1979. He submits that in the present case, DMC forwarded the prayer for post-facto approval of ADDA.

Subsequently, ADDA declined to regularise the unauthorised construction. Therefore, DMC has passed the order of demolition. He also acknowledges that in a township area, the Corporation follows the order passed by ADDA.

22. In the present case, since there was no approval accorded by ADDA with regard the alleged unauthorised constructions, DMC, consequently, has issued the demolition order.

23. Learned advocate appearing for respondent no. 6, on the other hand, submits that the order of demolition passed by DMC has been upheld by the learned single Judge. The order of the learned single Judge has been affirmed by the Division Bench. Therefore, in this writ petition, no order can be passed for regularisation of the alleged unauthorised construction. He places reliance upon a judgment passed by the Supreme Court in 2024 SCC OnLine SC 3767 (**Rajendra Kumar Barjatya v. U.P. Avas Evan Vikas Parishad**) dated December 17, 2024, and submits that an unauthorised construction can never be regularised.

24. After hearing the parties, I am of the view that DMC should not implement the demolition order unless and until the prayer for regularisation is considered by ADDA in accordance with law. It is essential to quote Section 53 of the Act of 1979.

“53. Notice regarding unauthorised development or use otherwise than in conformity with the [Land Use and Development Control Plan.] — (1) Where any development of land has been or is being carried out as mentioned in section 52, the Planning

Authority or the Development Authority shall serve on the owner a notice requiring him, within a period of one month after the service of the notice, to take such steps as may be specified in the notice, which shall be—

(a) in cases specified in clauses (a), (c) or (e) of sub-section (1) of section 52 to restore the land to its condition before the said development took place;

(b) in a case specified in clause (b) of sub-section (1) of section 52 to pay the development charge and such penalty, if any, as may be prescribed;

(c) in cases specified in clauses (d) or (f) of sub-section (1) of section 52 to secure compliance with the conditions or with the permission as modified.

(2) In particular, any such notice may, for the purpose aforesaid, require—

(a) the demolition or alteration of any building or works; (b) the carrying out on land, of any building or other operations; or

(c) the discontinuance of any use of land:

Provided that in case the notice relates to the discontinuance of any use of land, the Planning Authority or the Development Authority shall serve a notice on the occupier also.

(3) Any person aggrieved by such notice may, within the period specified in the notice—

(a) apply for permission under section 46 for the retention on the land of any buildings or

works or for the continuance of any use of the land, to which the notice relates; or

(b) apply to the concerned authority for reconsideration and withdrawal of the notice.

(4) (a) The notice shall be of no effect pending the final determination or withdrawal of the application.

(b) (i) The provisions of sections 45, 46 and 47 shall apply to such application with such modifications as may be necessary.

(ii) If permission is granted on an application made under clause (a) of sub-section (3), the notice shall not take effect, or if such permission is granted for the retention only of some buildings or works or for the continuance of use of only a part of the land, the notice shall not take effect regarding such buildings or works or such part of the land, but shall have full effect regarding other buildings or works or other parts of the land.

(5) The authority or any officer of the authority, appointed in this behalf, may dismiss the application or accept it by quashing or varying the notice as he may think fit.

(6) If within the period specified in the notice or within such period after the disposal or withdrawal of the application under sub-section (3), the notice or so much of it as continues to have effect, or the notice with variation made under sub-section (5) is not complied with, the Planning Authority or the Development Authority may—

(a) prosecute the owner for not complying with the notice and in case where the notice required the discontinuance of

any use of land, any other person also who uses the land or causes or permits the land to be used in contravention of the notice; and

- (b) (i) in the case of a notice requiring the demolition or alteration of any building or works or carrying out of any building or other operations, itself cause the restoration of the land to its condition before the development took place and secure the compliance with the conditions of the permission or with the permission as modified, by taking such steps as the Planning Authority or the Development Authority may consider necessary including demolition or alteration of any building or works or carrying out of any building or other operations;
- (ii) the Planning Authority or the Development Authority may recover the cost of any expenses incurred by it in this behalf from the owner as arrears of land revenue.

(7) Any person prosecuted under clause (a) of sub-section (6) shall be punishable with simple imprisonment for a term which may extend to six months or with a fine which may extend to two thousand rupees, or with both, and in the case of a continuing offence, with a further fine which may extend to two hundred rupees for every day during which such offence continues.”

25. The primary objectives of this section are: (a) to identify and regulate unauthorised developments; (b) to provide mechanisms for rectifying or

regularising such developments; and (c) to penalise non-compliance in order to maintain orderly urban and rural development.

26. The provision allowing for an application for retention or reconsideration strikes a balance between strict enforcement and fairness. It offers owners the opportunity to legalise developments that comply with planning norms. However, in my view, the interpretation that an application for regularisation is contingent upon the issuance of a notice under Sub-sections (1) and (2) of Section 53 could undermine the Act's purpose of providing an opportunity to legalise a development that conforms to planning norms.

27. It is unreasonable to suggest that a party wishing to regularise their construction should wait for a demolition notice. It is equally implausible to argue that the authority cannot regularise unauthorised construction without a demolition notice.

28. The purpose of Section 53 is to regulate unauthorised developments and bring them into compliance with planning norms. Requiring a notice as an absolute precondition for regularisation would defeat this objective, particularly when a party is voluntarily seeking to comply with the law without the need for an enforcement action. A purposive interpretation of the section allows the authority to consider an application for regularisation even in the absence of a notice, provided, the development can be brought into compliance. While Sub-section (3) outlines the steps to

be taken when a notice is issued, this does not imply that regularisation must always be reactive. A proactive approach, wherein parties apply voluntarily for regularisation, aligns with the objectives of Section 53. Such an interpretation is justified by the practical need to encourage voluntary compliance.

29. I am of the view that Sub-section (3) does not preclude regularisation in cases where no notice has been issued under Section 53(1) and (2). The Act does not prohibit a party from voluntarily applying for regularisation under Section 46 in the absence of the notice. Sub-section (3) does not limit the broader authority granted under Section 46.

30. The issue, as outlined in the opening paragraph of the judgment, can be effectively addressed by referring to Section 137 of the Act of 1979. Section 137 addresses the overriding effect of the Act, as quoted below:

“137. Overriding effect. — (1) The provisions of this Act and the rules and regulations Overriding made thereunder shall have effect notwithstanding anything inconsistent effect. therewith contained in any other law.

(2) Notwithstanding anything contained in any other law—

(a) when permission for development in respect any land has been obtained under this Act, such development shall not be deemed to be unlawfully undertaken or carried out by reason only of the fact that permission, approval or sanction required

under any other law for such development has not been obtained; this shall not, however, be construed as exemption to application for permission and of payments of such fees and charges as required by such other law,

(b) when permission for such development has not been obtained under this Act, such development shall not be deemed to be lawfully undertaken or carried out by reason only of the fact that permission, approval or sanction required under such other law for such development has been obtained.

(3) Notwithstanding the provisions of sub-sections (1) and (2), the provisions of the West Bengal Slum Areas (Improvement and Clearance) Act, 1972, if in conflict with the provisions of this Act, shall prevail.”

31. This section establishes the supremacy of the Act of 1979 over the West Bengal Municipal Corporation Act, 2006. Sub-section (1) stipulates that the provisions of this Act, along with the rules and regulations made under it, shall take precedence over any conflicting provisions in other laws. Thus, in the event of any inconsistency between this Act and other laws, this Act will prevail.

32. Sub-section (2) clarifies two key points: first, if a development has been carried out without obtaining the necessary permission under this Act, it will not automatically be deemed lawful simply because permission,

approval, or sanction has not been obtained under other laws; second, if permission has not been granted under other laws but has been granted under this Act, the development will not be considered unlawful.

33. This section confirms that Act of 1979 holds overriding authority, making it the primary legal framework for matters related to development.

34. In view of the above, it must be held that since the alleged unauthorised construction falls under the jurisdiction of the Act of 1979, ADDA as well as UDMA should have considered the request for regularisation of the petitioners on merit in terms of the interim order dated June 21, 2023, passed in WPA 28017 of 2022, without requiring the issuance of a notice under Section 53(1) of the Act of 1979.

35. Accordingly, the orders dated November 21, 2023, passed by ADDA, and August 17, 2023, passed by UDMA, are set aside.

36. It is also important to note that the Division Bench on April 29, 2024, upheld the order of the learned Single Judge, inter alia, observing that the order of ADDA dated November 21, 2023, was not challenged by the petitioners.

37. I am of the view that since the petitioners have succeeded in challenging the order of ADDA dated November 21, 2023, and the order dated August 17, 2023, passed by UDMA, this Court is not precluded to pass an appropriate order for the ends of justice.

38. In view of the aforesaid, this writ petition is disposed of with a direction upon ADDA to consider the prayers for regularisation of the petitioners made before ADDA, in terms of Section 53 (4) of the Act of 1979 within a period of one month from the date of communication of this order.

39. Pending consideration of the prayer for post-facto approval, DMC shall not implement the demolition order dated August 24, 2022 and January 18, 2024. DMC will act in terms of the order that may be passed by ADDA in compliance with this order.

40. With the aforesaid directions, **WPA 15851 of 2024** and **I.A. No. C.A.N. 1 of 2024** is disposed of.

41. Urgent certified website copy of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Kausik Chanda, J.)