

02.04.2025
Item No. 20
Ct. No. 30
Aloke

WPA 18390 of 2017

**Nandadulal Laha & Ors.
Vs
The State of West Bengal & Ors.**

Ms. Sarmila Das
Mr. Bodhishatwa Chakraborty
... for the petitioners

Mr. Gautam Lahiri
... for the respondent nos. 3, 4 & 6

Mr. Susanta Pal
Mr. Md. Mansoor Alam
... for the State

1. The present writ application has been preferred praying for direction upon the respondent nos. 3, 4, 5 and 6 to act in accordance with law and remove the encroachment made by the respondent no. 7 in the municipal lane.
2. On hearing the learned counsels for the parties and considering the materials on record, it appears that a Coordinate Bench of this Court had called for a report and on the report being placed, considering the report vide order dated 27.06.2018 the Court held as follows:-

“The report disclose that, the municipality upon inspection has found unauthorized construction and has issued a notice under Section 218 of the West Bengal

Municipal Act, 1993, dated June 25, 2018.

In view of the municipality taking steps as noted above, it would be appropriate to request the municipality to complete such proceedings under Section 218 of the Act of 1993 as expeditiously as possible.

The parties are at liberty to agitate their respective contentions before the municipality in such proceedings in accordance with law.

It is clarified that, the municipality will not stall the proceedings under Section 218 on the ground of pendency of the writ petition”.

3. It appears that the municipality has not complied with the said order till date.
4. It also appears that in its report the municipality has stated as follows:-

“During inspection it is found that, 2(two) nos. of projected roofs has been projected over the alleged municipal road, measuring-19’x2’ and 8’x2’ with a height of 13’ from the ground level and another projected stair landing measuring 8’x1½ with a height 8’ from the ground level.”

5. It is thus clear from the said report that there has been encroachment and unauthorized construction over the municipal road.

6. Learned counsel for the municipality submits that he has no further instruction in the matter.
7. **Considering the said fact, the Chairman, Serempore Municipality, the respondent nos. 3 and 4 are directed to take steps under Section 218 of the West Bengal Municipal Act within a period of 30 days from the date of this order.**
8. The private respondents have failed to appear in spite of having appeared earlier in the writ application.
9. **While carrying out the demolition proceeding** the Municipality shall comply with the guidelines of the Hon'ble Supreme Court as laid down in **Writ Petition (Criminal) No. 162 of 2022 and Writ Petition (Civil) No. 328 of 2022, Re: Demolition of unauthorized structures,** wherein the Court held:-

“90. In order to allay the fears in the minds of the citizens with regard to arbitrary exercise of power by the officers/officials of the State, we find it necessary to issue certain directions in exercise of our power under Article 142 of the Constitution. We are also of the view that even after orders of demolition are passed, the affected party needs to be given some time so as to challenge the order of demolition before an appropriate forum. We are further of the view that even in cases of persons who do not wish to contest the demolition order, sufficient time needs to be given to them to vacate

and arrange their affairs. It is not a happy sight to see women, children and aged persons dragged to the streets overnight. Heavens would not fall on the authorities if they hold their hands for some period.

91. *At the outset, we clarify that these directions will not be applicable if there is an unauthorized structure in any public place such as road, street, footpath, abutting railway line or any river body or water bodies and also to cases where there is an order for demolition made by a Court of law.*

A. NOTICE

- i. *No demolition should be carried out without a prior show cause notice returnable either in accordance with the time provided by the local municipal laws or within 15 days' time from the date of service of such notice, whichever is later.*
- ii. *The notice shall be served upon the owner/occupier by a registered post A.D. Additionally, the notice shall also be affixed conspicuously on the outer portion of the structure in question.*
- iii. *The time of 15 days, stated herein above, shall start from the date of receipt of the said notice.*
- iv. *To prevent any allegation of backdating, we direct that as soon as the show cause notice is duly served, intimation thereof shall be sent to the office of Collector/District Magistrate of the district digitally by email and an auto generated reply acknowledging receipt of the mail should also be issued from the office of the Collector/District Magistrate. The Collector/DM shall designate a nodal officer and also assign an email address and communicate the same to all the municipal and other authorities in charge of building regulations and demolition within one month from today.*
- v. *The notice shall contain the details regarding:*

- a. the nature of the unauthorized construction.
- b. the details of the specific violation and the grounds of demolition.
- c. a list of documents that the noticee is required to furnish along with his reply.
- d. The notice should also specify the date on which the personal hearing is fixed and the designated authority before whom the hearing will take place;
- vi. Every municipal/local authority shall assign a designated digital portal, within 3 months from today wherein details regarding service/pasting of the notice, the reply, the show cause notice and the order passed thereon would be available.

B. PERSONAL HEARING

- i. The designated authority shall give an opportunity of personal hearing to the person concerned.
- ii. The minutes of such a hearing shall also be recorded.

C. FINAL ORDER

- i. Upon hearing, the designated authority shall pass a final order.
- ii. The final order shall contain:
 - a. the contentions of the noticee, and if the designated authority disagrees with the same, the reasons thereof;
 - b. as to whether the unauthorized construction is compoundable, if it is not so, the reasons therefor;
 - c. if the designated authority finds that only part of the construction is unauthorized/noncompoundable, then the details thereof.
 - d. as to why the extreme step of demolition is the only option available and other options like compounding and demolishing only part of the property are not available.

D. AN OPPORTUNITY OF APPELLATE AND JUDICIAL SCRUTINY OF THE FINAL ORDER.

- i. We further direct that if the statute provides for an appellate

opportunity and time for filing the same, or even if it does not so, the order will not be implemented for a period of 15 days from the date of receipt thereof. The order shall also be displayed on the digital portal as stated above.

ii. An opportunity should be given to the owner/occupier to remove the unauthorized construction or demolish the same within a period of 15 days. Only after the period of 15 days from the date of receipt of the notice has expired and the owner/occupier has not removed/demolished the unauthorized construction, and if the same is not stayed by any appellate authority or a court, the concerned authority shall take steps to demolish the same. It is only such construction which is found to be unauthorized and not compoundable shall be demolished.

iii. Before demolition, a detailed inspection report shall be prepared by the concerned authority signed by two Panchas.

E. PROCEEDINGS OF DEMOLITION

i. The proceedings of demolition shall be video-graphed, and the concerned authority shall prepare a demolition report giving the list of police officials and civil personnel that participated in the demolition process. Video recording to be duly preserved.

ii. The said demolition report should be forwarded to the Municipal Commissioner by email and shall also be displayed on the digital portal.

92. *Needless to state that the authorities hereinafter shall strictly comply with the aforesaid directions issued by us.*

93. *It will also be informed that violation of any of the directions would lead to initiation of contempt proceedings in addition to the prosecution.*

94. *The officials should also be informed that if the demolition is found to be in violation of the orders of this Court, the officer/officers concerned will be held responsible for restitution of the*

demolished property at his/their personal cost in addition to payment of damages.”

10. WPA 18390 of 2017 is accordingly disposed of.

11. There will be no order as to costs.

12. All connected applications, if any, stand disposed of.

13. Interim order, if any, stands vacated.

14. Urgent photostat certified copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Shampa Dutt (Paul), J.)