

14.07.2025  
Ct. No. 30  
S.L. No. 25  
SM

**WPA 18493 of 2006**  
**With**  
**CAN 2 of 2020 (Old No. CAN 2948 of 2020)**  
**CAN 3 of 2024**  
**United Spirits Ltd.**  
**Versus**  
**Konnagar Municipality & Ors.**

Mr. Joydip Kar, ld. Sr. adv.  
Mr. Ajay Gaggar  
Mr. Uttiyo Mallick  
Mr. Sayan Banerjee

.....for the petitioner

Mr. Diptomoy Talukder  
Mr. Triptimoy Talukder  
Mr. Dibyendu Ghosh  
Mr. Abhiraj Tarafdar

.....for the Konnagar Municipality

1. The writ application has been preferred praying for direction upon the respondent/Municipality to demolish the structures put up in the suit premises and to remove the same and restore the premises in its original position.
2. The petitioner further prays for restoration of possession of the property of the petitioners.
3. The petitioner's case is that it has absolute right, title, interest in the disputed premises.
4. It is further stated that on 10.7.2006 the petitioners suddenly noticed that there was certain encroachment on the said land by unidentified persons and a wall bamboo fencing was being illegally constructed therein all around the property. Infact the durwans of the

petitioners who were there were driven out of the property.

5. Immediately after the said fact came to the notice of the petitioners, the petitioners by a letter dated 10.7.2006 addressed to The Inspector in charge, Uttarpara Police Station, District Hooghly informed the said fact with a request to take necessary action.
6. The police authorities failed, neglected and refused to take any action to stop the said unauthorized encroachment and as a result, the petitioners had to run from pillar to post and approach both the Officer in Charge as well as the Superintendent of Police being the respondents herein.
7. In course of such approach it transpired that the said land was being encroached upon by and or at the instance of the Konnagar Municipality, and the Chairman thereof being the respondent no. 2 herein was taking active interest in such encroachment and or illegal occupation of the said property.
8. **A Special Officer was appointed in the present case and a report has been placed before this Court where the relevant extract is as follows:-**

*“.....In presence of the said Learned Advocates and the authorized representative of petitioner company and Municipality, I have inspected the property and during inspection it is found that at Western side of the property, 11(eleven) Kaccha structures are there occupied by 1. Nirupa Mallick, 2. Manoj Dom. 3. Md. Dilbar. 4. Boto Mondal. 5. Robi Das. 6. Karan Mallick. 7. Laxmi Bag. 8. Paran Mondal. 9 Samir Halder, 10. Ankur Bag and 11. Abhijit Mondal. As told by the occupants, the following persons having separate privy:*

- 1. Nirupa Mallick,*
- 2. Samir Halder,*
- 3. Manoj Dom,*
- 4. Paran Mondal*

*But all the occupants having separate electric connection.*

*At the corner of South-West portion of the property, there is a two storied structure which was locked at the time of inspection and from the board affixed therewith, it appeared that it belongs to Konnagar Arabindo Bhyam Samity. The Learned Advocate for the municipality as well Learned Advocate for the petitioner company and their representative confirmed that the structure is within the boundary of the company's property.*

*Save and accept as above, no other encroachment and/or fittings and fixtures could be found at the property during inspection.”*

- 9.** It is the contention of the petitioner that in spite of making several complaints before the Municipality, there has been severe inaction on the part of the Municipality.

10. Learned senior counsel Mr. Kar appearing for the petitioner relies upon the judgment of the Supreme Court in ***Rajendra Kumar Barjatya & Anr. vs U.P. Avas Evam Vikas Parishad & Ors., 2024 SCC OnLine SC 3767***, wherein the Court held:-

**“19. ....**

**“IX. DIRECTIONS**

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.”*

**20.** *In the ultimate analysis, we are of the opinion that construction(s) put up in violation of or deviation from the building plan approved by the local authority and the constructions which are audaciously put up without any building planning approval, cannot be encouraged. Each and every construction must be made scrupulously following and strictly adhering to the Rules. In the event of any violation being brought to the notice of the Courts, it has to be curtailed with iron*

*hands and any lenience afforded to them would amount to showing misplaced sympathy. Delay in directing rectification of illegalities, administrative failure, regulatory inefficiency, cost of construction and investment, negligence and laxity on the part of the authorities concerned in performing their obligation(s) under the Act, cannot be used as a shield to defend action taken against the illegal/unauthorized constructions. That apart, the State Governments often seek to enrich themselves through the process of regularisation by condoning/ratifying the violations and illegalities. The State is unmindful that this gain is insignificant compared to the long-term damage it causes to the orderly urban development and irreversible adverse impact on the environment. Hence, regularization schemes must be brought out only in exceptional circumstances and as a onetime measure for residential houses after a detailed survey and considering the nature of land, fertility, usage, impact on the environment, availability and distribution of resources, proximity to water bodies/rivers and larger public interest. Unauthorised constructions, apart from posing a threat to the life of the occupants and the citizens living nearby, also have an effect on resources like electricity, ground water and access to roads, which are primarily designed to be made available in orderly development and authorized activities. Master plan or the zonal development cannot be just individual centric but also must be devised keeping in mind the larger interest of the public and the environment. Unless the administration is streamlined and the persons entrusted with the implementation of the act are held accountable for their failure in performing statutory obligations, violations of this nature would go unchecked and become more rampant. If the officials are let scot-free, they will be*

*emboldened and would continue to turn a nelson's eye to all the illegalities resulting in derailment of all planned projects and pollution, disorderly traffic, security risks, etc.....”*

- 11.** Mr. Kar, further relies upon Section 63 Clause (4)(i) of the West Bengal Municipal Act and submits that it is the duty of the Municipality to check the construction of unauthorized buildings and it is their duty to pull down such unlawful construction.
- 12.** On the other hand, the learned counsel appearing for the Municipality submits that in this case, several persons are in possession of the disputed property and even if they have trespassed, they cannot be dispossessed other than by due process of law and the Municipality is not authorized to recover possession in such cases.
- 13.** The petitioners submit that they may be given an opportunity to apply before the Municipality invoking the provision of Section 218 of the Municipal Act, 1993.
- 14.** On hearing the parties and on considering the materials on record including the present status of the property, the writ application is disposed of with leave granted to the petitioner to make an appropriate application before the

appropriate authority being the Konnagar Municipality herein within 30 days from the date of this order.

**15.** The Municipality shall consider the same as per the respective provisions of the act and keeping in mind their statutory duty as laid down under Section 63 of the Act, dispose of the application/representation within 30 days thereafter on granting opportunity of hearing to the respective parties and by passing a reasoned order.

**16. Writ application stands disposed of.**

**17.** Applications, if any, connected thereto stand disposed of consequently.

**18.** Interim order, if any, stands vacated.

**19.** Photostat certified copy of this order, if applied for, be given to the parties on priority basis upon compliance of all formalities.

**[Shampa Dutt (Paul), J.]**