

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

PRESENT:

THE HON'BLE JUSTICE ARINDAM MUKHEREJEE.

CO 2539 of 2024

With

CAN 1 of 2024

CAN 2 of 2024

CAN 3 of 2024

M. K. Construction

-Vs-

Ramesh Chandra Mukhopadhyay & Ors.

For the petitioner : Mr. Apurba Kr. Ghosh,
Mr. Rudranil Ghosh

.....Advocates

For the Bally Municipality : Mr. Ayan Banerjee,
Ms. Debasree Dhamali,
Ms. Riya Ghosh,
Ms. Debolina Ghosh

.....Advocates

For the Respondent No. 4 : Mr. Nilanjan Bhattacharjee,
Mr. A. Chatterjee,
Mr. Saikat Dey

.....Advocates

Heard on : **28th October, 2025**

Judgment on : **28th October, 2025.**

Arindam Mukherjee, J.:

1. The revisional application arises out of an order dated 22nd December, 2023 passed by the learned Civil Judge (Junior Division), 1st Court at Howrah in Other Appeal No. 3 of 2022 (Ramesh Chandra Mukhopadhyay vs. Bally Municipality & Ors.).

2. In the said revisional application, on 30th July, 2024, an ad interim order was passed by which the operation of the order of demolition dated 28th July, 2022 passed by the Administrator, Bally Municipality which was upheld in the appeal was stayed till the end of the month of November, 2024. This order has been extended from time to time and lastly extended by the order dated 29th January, 2025 till the end of October, 2025 or until further order whichever is earlier.
3. This matter on being mentioned for extension of interim order before this Bench citing urgency as the regular Bench is not available, has been brought into the list.
4. The respondent no. 4 has filed a vacating application being CAN 3 of 2025 on 6th March, 2025 to vacate the order dated 30th July, 2024, which was lastly extended on 29th January, 2025.
5. Apart from the revisional application and the vacating application as stated hereinabove, there are also two applications made by the petitioner for substituting the legal heirs of respondent no. 1, who died on 4th August, 2024 during the pendency of the revisional application.
6. The application for substitution being CAN 1 of 2024 was filed on or about 27th December, 2024 and CAN 2 of 2024 is an application for condoning the delay in filing the substitution application.

In Re: CAN 1 of 2024 and CAN 2 of 2024

7. An application for substitution in respect of suit or an appeal is required to be filed within 90 days from the date of death of a party as enumerated under Article 120 of Limitation Act, 1963 (hereinafter referred to as '1963 Act') and further 60 days' time is available with the applicant as enumerated under Article 121 of 1963 Act. Although, the substitution in case of a revisional application is not included either in Article 120 or 121 of 1963 Act yet in view of the provisions of Section 141 of Code of Civil Procedure, 1908 (in short 'CPC') read with the substantive provision for substitution being laid down in Order 22 of CPC, the provision of Articles 120 and 121 of 1963 Act gets attracted in view of reference of CPC therein when conjointly read with the provisions of Section 141 and Order 22 of CPC. Even going by the provisions of Article 137 of 1963 Act the substitution application is within time having been made within three years from the date of death of the respondent no.1.
8. In the application being CAN 1 of 2024 or CAN 2 of 2024 although, there is no specific pleading as to when the petitioner came to know about the death of respondent no. 1 but under the provisions of Order 22 Rule 10A of CPC it was the responsibility of the advocate/pleader representing the respondent no.1 to bring to the notice of the Court about the death of respondent no. 1.
9. It was, therefor, incumbent upon the advocate representing the respondent no.1 since deceased to bring to the notice of this Court regarding the death of the respondent no.1 which appears to have not been done.

10. In such facts and circumstances, after considering the grounds for delay and giving the benefit of having derived knowledge subsequent to the death of the respondent no.1, the application for substitution, though has been made beyond 90 days but prior to expiry of 60 days, is allowed by condoning the delay and setting aside the abatement, if any, although such leave to set aside the abatement has not been specifically prayed for. There is no abatement as the right to sue summons against the legal heirs of respondent no.1 being the owner of the immovable property in connection whereof the demolition order has been made or illegal/unauthorized construction is alleged.
11. The learned advocate for the petitioner is permitted to insert the names of the legal heirs of deceased-respondent no.1 as provided in the application in paragraph 8 in CAN 1 of 2024. The amendment, pursuant to leave granted by this order, shall be carried out in the course of the day.
12. In the aforesaid facts and circumstances, the applications being CAN 1 of 2024 and CAN 2 of 2024 are accordingly disposed of by recording the death of the respondent no.1 and substituting his legal heirs as parties to the revisional application.

In Re: CO 2539 of 2024

13. This matter appears to have a checkered history. The revisional applicant is the developer, who was engaged by the original respondent no.1 to develop immovable properties being holding No.6/1 and 6/2, Amrita Lal Nath Lane, P.O. Belurmah, P.S. Bally, District Howrah within the jurisdiction Bally Municipality

(hereinafter referred to as the 'developed properties'), being the owner thereof.

14. It appears from the record that the respondent no.4, being the owner of an adjacent property to the developed properties, raised a complaint about the illegal/unauthorized construction having made at the developed properties.
15. The respondent no.4 filed a writ petition being WPA 19972 of 2021 (Sankar Mukherjee vs. The Howrah Municipal Corporation & Ors.) alleging illegal/unauthorized construction by the petitioner and respondent no.1. This writ petition was disposed of by an order dated 24th March, 2022 directing the writ petitioner to lodge a detailed complaint with the Administrator of Bally Municipality and further directed the said Administrator to dispose of the complaint in accordance with law, in the manner as set out in the said order. This order was not appealed against by the petitioner of the revisional application.
16. The writ petitioner lodged a detailed complaint on the basis whereof, the Administrator, Bally Municipality after having the site inspected ultimately came to a conclusion that there has been illegal/unauthorized construction at the developed properties to the extent that the entire 4th floor having a constructed area 244.30 Sq. Meter was without any sanction plan. There are also other deviations in the G+3 structure for which the plan has been sanctioned. The sanction was granted by Howrah Municipality vide plan No.BRC 218/19-20 for G+3 storey residential building.

17. The Administrator, therefor, by this order dated 28th July, 2022 directed demolition of 4th floor at the developed properties along with deviated portion in other floors.
18. An appeal was filed by the petitioner challenging such order under Section 218 (3) of West Bengal Municipal Act, 1993 (hereinafter referred to as, “1993 Act”). This appeal being Other Appeal No.3 of 2022 was dismissed by the order impugned dated 22nd December, 2023.
19. Challenging the said order, this revisional application has been filed. The main contention of the petitioner is that the Administrator/Bally Municipality did not have the jurisdiction to decode the issue of the illegal/unauthorized construction at the developed properties or to direct demotion of portions thereof. An *ad interim* order dated 30th July, 2024 as stated hereinabove was passed on this ground.
20. The petitioner says that under the provisions of 1993 Act, it is the Board of Councilor who is authorized to go into the issue of illegal/unauthorized construction and to pass demolition order. The Administrator did not possess such power and authority. The order passed by the Administrator is, therefor, without jurisdiction.
21. At the relevant point of time, the Board of Councilor, Bally Municipality stood defunct. The affairs of the said authority was under the Government sanction managed by the Administrator. The petitioner says that even if the Administrator was appointed by the Government, yet in absence of any specific delegation of power, the Administrator cannot or could not have gone into the issue of illegal/unauthorized construction on the complaint made by the

respondent no.4 and directed demolition of certain portion of the developed properties. The order being without jurisdiction should have set aside.

22. The respondent no.4, after dismissal of the Order Appeal, had filed a writ petition being WPA 1868 of 2024 (Shankar Mukherjee vs. State of West Bengal & Ors.), seeking implementation of the demolition order. The said writ petition was disposed of by an order dated 30th April, 2024 directing the Bally Municipality to take steps to implement the order of demolition at the earliest but positively within 31st July, 2024 and to recover the cost of demolition from the person responsible for making the construction.
23. Challenging this order, the petitioner filed an appeal being MAT 1424 of 2024 as also four applications therein. The said appeal is pending for final adjudication as will appear from the order dated 6th January, 2025 followed by the order dated 10th February, 2025.
24. At the time of considering the extension of interim order and in view of vacating application filed by the respondent no.4, this Court is minded in taking up the revisional application for final hearing on merits instead of restricting the hearing only to the extension of the interim order.
25. It is admitted position that the order dated 24th March, 2022 passed in the writ petition filed by the respondent no.4 being WPA No.19972 of 2021 directing the Administrator, Bally Municipality to decide the complaint filed by the respondent no.4 remained unchallenged. Although, the circular and notification annexure to the vacating application of the respondent no.4 (CAN 3 of 2025) reveal that the

Administrator had been authorized by the State Government to adjudicate upon the issue of illegal/unauthorized construction, yet assuming without admitting that such power was not delegated to the Administrator by the State, then also the jurisdiction of the Administrator cannot be faulted as this Court by order dated 24th March, 2022 passed in WPA no.19972 of 2021 had specifically referred the issue to the Administrator, he complied with the directions given by this Court vide order dated 24th March, 2022 passed in WPA 19972 of 2021. The said order had achieved finality prior to the Administrator had passed his order dated 28th July, 2022 and as such, the direction given by this Court in exercise of its power under Article 226 of the Constitution of India cannot also be now contended to have not given the Administrator the jurisdiction to look into the complaint made by the respondent no.4. Hence, the Administrator had the jurisdiction to pass the order dated 28th July, 2022.

26. Furthermore, in absence of Board of Councilor, a person cannot be left remediless. It is clear as held in paragraph 64 of the judgment reported in **1993 (Supp) (2) SCC 433 [M.V. Elisabeth & Ors. vs. Harwan Investment and Trading Pvt. Ltd., Hanoekar House, Swatontapeth, Vasco-De-Gama, Goa]**, “where statutes are silent and remedy has to be sought by recourse to basic principles, it is the duty of the court to devise procedural rules by analogy and expediency”. Moreover, the legal maxim Ubi jus ibi remedium – as explained in **2002 (6) SCC 16 [Dhannalal v. Kalawatibai & Ors.]**:-

“21. Reference to, or deriving aid from, certain legal maxims will be useful. Ubi jus ibi remedium — there is no wrong without a remedy. Where there is a right there is a forum for its enforcement. According to Broom's Legal Maxims (10th Edn., pp. 118-19), the maxim has been considered so valuable that it led to the invention of the form of action called an action on the case. Where no precedent of a writ can be produced, the Clerks in Chancery shall agree in forming a new one. The principle adopted by courts of law accordingly is, that the novelty of the particular complaint alleged in an action on the case is no objection, provided that an injury cognizable by law be shown to have been inflicted on the plaintiff, in which case, although there be no precedent, the common law will judge according to the law of nature and the public good. If a man has a right, he must, “have a means to vindicate and maintain it, and a remedy if he is injured in the exercise and enjoyment of it, and, indeed, it is vain thing to imagine a right without a remedy, for want of right and want of remedy are reciprocal”.

Clearly holds that “there is no wrong without a remedy. Where there is a right there is a forum for its enforcement”.

27. A person, therefor, cannot be remediless or denuded from a forum for redressal of his grievance. In the instant case if the Board of Councilor of Bally Municipality is defunct or stands superseded, a mechanism has to be devised by the Court for addressing the grievances regarding the illegal/unauthorized construction. This Court, by the order dated 24th March, 2022 even in absence of any authority granted to the Administrator by the State, which is, however, not the admitted position, has devised a mechanism to redress the grievances of the respondent no.4.

28. The action of the Administrator in deciding the complaint of the respondent no.4 or adjudicating the issue of illegal/unauthorized construction, therefor, cannot be construed to be an act or an action without jurisdiction. The order dated 28th July, 2022, therefore, cannot also be held to be an order without jurisdiction. It is also evident from paragraphs 5 to 9 of the order impugned that the learned Civil Judge (Junior Division), 1st Court, Howrah in the order impugned has discussed in details, the jurisdictional issue as to the Administrator's authority to decide on the issue of illegal/unauthorized construction or to pass an order of demolition, by giving reasons, there is as such no material irregularity or illegality in the order impugned. Apart from the observations as aforesaid, I also do not find any irregularity far less illegality in the order impugned so as to the jurisdictional issue and other issues are concerned.
29. The fact remains that the 4th floor of the developed properties was constructed without any sanction plan. On the basis of such admitted position, the Administrator has directed the demolition, has been upheld in the order impugned.
30. The law as to illegal/unauthorized construction has been settled by the Hon'ble Supreme Court in the judgments reported in ***Dipak Kr. Mukherjee vs. Kolkata Municipal Corporation [2013 (5) SCC 336]*** and judgment and order 7th February, 2022 reported in ***(2021) 10 SCC 1 [Supertech Ltd. Vs. Emerald Court Owner Resident Welfare Association & Ors.]***.

31. Applying the ratio laid down in the said judgment, I also do not find any material irregularity or illegality in the order passed by the Administrator directing demolition of the 4th floor having been constructed without any sanction plan and the order impugned.
32. So far as the order of demolition against the deviated portions of the other flows of the developed properties which has been also directed to be demolished by the order dated 28th July, 2022 is concerned the petitioner's contention that these portions can be regularized, I am not inclined to go into this issue as the appeal against the order directing enforcement of the order of demolition filed by the petitioner is pending.
33. In the aforesaid facts and circumstances, the revisional application being CO 2539 of 2024 fails and the same is accordingly dismissed. The interim order stands vacated.

In Re: CAN 3 of 2025

34. Since the main revisional application is heard and disposed of, the vacating application being CAN 3 of 2025 filed by the respondent no.4 stands disposed of without any further order.
35. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities

(Arindam Mukherjee, J.)

(Milan)