

25.02.2025
Ct. No. 30
S.L No.27
SM

WPA 19085 of 2017
Noor Mohammad Mandal
Vs.
The State of West Bengal & Ors.

Mr. Ziaul Islam
..... for the Petitioner
Mr. Rajarshi Basu
Mr. K.M. Hossain
.....for the State

1. The State has placed a report in the form of affidavit as directed by this Court. The relevant part of the report is as follows:-

“That your deponent states that after physical inspection of the said land it was found as follows:-

- i. Construction is there on the said land;***
- ii. The said construction was done without getting any permission from the statutory authority, as such the said construction is unauthorized construction.”***

2. At the time of hearing the learned counsel for the State has placed letter dated 20.02.2025 issued by the B.D.O Purbasthali I, Purba Bardhaman to the Pradhan Nadanghat Gram Panchayat wherein it is informed that the private respondents were served notice on 31st January, 2025 with direction to demolish unauthorized construction.
3. It appears that in spite of the said letter, the unauthorized construction is still in existence and no steps has been taken by the private

respondents who are not before the Court in spite of being served.

4. In Writ Petition (Criminal) No. 162 of 2022 and Writ Petition (Civil) No. 328 of 2022, the Supreme Court on passing directions in the matter of demolition of structures, 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.”*

5. Keeping with the guidelines of the Supreme Court in ***re:-demolition of structures (Supra)***, it is directed that the respondent/municipality shall take necessary steps **as per their report** for demolition of the unauthorized thus illegal construction within 30 days from the date of this order with prior notice to the parties to vacate the portion to be demolished.
6. The total process of demolition to be video graphed.
7. **WPA 19085 of 2017 stands disposed of.**
8. All connected applications, if any, stand disposed of.
9. Interim order, if any, stands vacated.
10. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

[Shampa Dutt (Paul). J]