

AD-7
Ct No.36
28.03.2025
(SSS)

RVW No. 188 of 2023
In
CO 1964 of 2022
With
CAN 1 of 2023

Kali Prasad Shaw
Vs.
The Board of Councilors of Baranagar
Municipality and Anr.

Mr. Aniruddha Chatterjee, Sr. Adv.
Mr. Debabrata Roy
.....For the Petitioner.

1. This is an application for review of the order dated August 17, 2023 passed in CO 1964 of 2022.
2. The petitioner submits that by a subsequent notification, the department of Urban Development and Municipal Affairs dated July 27, 2023 empowered the Board of Councilors to regularize minor unauthorized constructions which were in violation of the sanctioned plan. At the relevant point of time, when the matter was decided by the municipal authority, and by this court, the administrative order and/or a notification was not in vogue. The notification cannot be given retrospective effect. The notification also authorizes the Board of Councilors to regularize unauthorized contraction,

but does not make the regularization compulsory. The key word is “may”. This cannot be read as mandatory. The Board of councillors have a discretion to regularize minor deviations or unauthorized constructions, which can be exercised on a case to case basis, if at all. The municipality, upon going through the facts and upon hearing the parties, had passed an order of demolition. The same was challenged in an appeal before the learned Civil Judge (Junior Division), Bidhannagar in Municipal Appeal No. 2 of 2018. The appeal was dismissed. The petitioner challenged the said order before this court by filing the civil revision. The revisional court took into account the position of law and other facts in issue and arrived at the conclusion that the order passed by the appellate court did not suffer from any material irregularity. It was also recorded that the municipality had allowed excess construction on the east, west and south, as the adjacent owners had agreed to forego the minimum space requirement. For the northern side, the demolition order was passed. Thus, the municipality had also exercised its discretion and allowed a portion of the unauthorized construction of the petitioner. The court recorded that the petitioner could not approbate and reprobate. While the petitioner had taken advantage of the order of relaxation which was also part of the

demolition order, the petitioner turned around and challenged the portion which was not acceptable to him. This was not permissible in law.

3. A party can seek review of an order on grounds of discovery of new evidence, error apparent on the face of record or for sufficient reasons, analogous to the first two. The grounds pleaded amount to asking this court to enlarge the scope of the revisional application and to pass such orders which are beyond the pleadings. In review, a court cannot rehear the entire revisional application.

4. Under such circumstances, the review application is dismissed as the grounds for review do not exist. Accordingly, CAN 1 of 2023 is also disposed of.

(Shampa Sarkar, J.)