

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

**HEARD ON: 02.07.2025
DELIVERED ON: 02.07.2025**

**PRESENT:
THE HON'BLE MR. JUSTICE GAURANG KANTH**

WPA 24313 of 2024

ANNEX COLLEGE OF MANAGEMENT STUDIES & ORS

VERSUS

THE STATE OF WEST BENGAL & ORS.

Appearance:-

Ms. Reshmi Ghosh, Adv.
Ms. Parna Mukherjee, Adv.

... .. for the petitioners

Mr. Aditya Ratan Tiwary, Adv.
Mr. Subhajit Mukherjee, Adv.

... .. for respondent no.4

Mr. Tirthankar Dey, Adv.
Mr. Arka Kumar Nag, Adv.
Ms. S. Banerjee, Adv.

... .. for the BMC

Mr. Mohan Kumar Sanyal, Adv.
Mr. Subrata Bhattacharjee, Adv.

... .. for the State

JUDGMENT

Gaurang Kanth, J. :-

1. The petitioners, by way of the present writ petition, are aggrieved by the alleged inaction on the part of the Respondent–Bidhannagar Municipal Corporation in failing to take appropriate and effective steps to ensure that the private respondent no. 4 undertakes the necessary repair and renovation work in respect of the premises situated at BD-91, Sector-I, Salt Lake City, Kolkata.

2. It is the case of the petitioners that respondent no. 4 is the owner of the said premises, and the petitioners are in occupation thereof as lessees under a Leave and Licence Agreement dated 01.06.2016. Although the said agreement expired by efflux of time on 31.05.2021, the petitioners have continued in possession of the premises. As a consequence, respondent no. 4 has initiated eviction proceedings against the petitioners, which are currently pending adjudication before the learned Civil Judge (Senior Division), Barasat, in Title Suit No. 1201 of 2022. The petitioners allege that the subject building is in a state of disrepair and poses imminent structural and safety concerns, necessitating urgent repair and renovation.

3. Learned counsel for the petitioners submits that her clients had lodged a formal complaint before the Bidhannagar Municipal Corporation, whereupon the said authority caused an inspection of the premises to be conducted. Based on such inspection, the Corporation issued a show-cause notice dated 24.04.2024, directing respondent no. 4 to undertake necessary repair and renovation works. However, despite the issuance of the said notice, respondent no. 4 has failed to take any steps towards compliance.

4. In support of her submissions, learned counsel for the petitioners has placed reliance upon Section 222 of the West Bengal Municipal Act, 1993, which, according to her, empowers the Board of Councillors, for sufficient reasons, to direct the owner or occupier of a building to maintain the external parts of such building, including the roof, in proper repair with lime plaster or other materials to the satisfaction of the Board. She further refers to sub-section (2) of Section 222, which provides that in the event of default by the owner or occupier in complying with such directions, the Board may itself carry out the necessary repair work and recover the cost thereof from the defaulter. Learned counsel also relies on the provisions of Section 96A of the West Bengal Municipal Corporation Act, 2006, which relates to precautions in respect of

dangerous structures. It is further submitted that a civil dispute between the parties is pending before the learned Civil Judge (Junior Division), Bidhannagar, in Title Suit No. 55 of 2022.

5. Learned counsel for the respondent–Bidhannagar Municipal Corporation submits that the impugned notice dated 24.04.2024 was issued under the authority of Section 268 of the West Bengal Municipal Corporation Act, 2006. He submits that the West Bengal Municipal Act, 1993 has no application to the present case, as the Bidhannagar Municipal Corporation is now governed by the 2006 Act. It is further submitted that the applicability of Section 96A of the 2006 Act arises only upon a prior declaration by the competent authority, based on objective assessment, that the building in question is dangerous or ruinous. Such a declaration, it is submitted, must be made in accordance with the procedure prescribed under Section 268 and the relevant rules framed thereunder. Consequently, it is contended that Section 96A is not attracted in the facts of the present case.

6. Learned counsel for the private respondent no. 4 submits that the relationship between the parties is governed by the Leave and Licence Agreement dated 01.06.2016, which, according to him, contains clauses permitting the petitioners to request necessary repairs during the subsistence of the agreement. However, he contends that the said agreement has expired on 31.05.2021, and the petitioners' continued possession is unauthorized. He further points out that several civil suits are pending between the parties and that a criminal proceeding has also been initiated by petitioner no. 2 against respondent no. 4.

7. This Court has heard the arguments advanced by the learned Advocates for the respective parties and has perused the materials on record.

8. The core issue that arises for consideration before this Court at this stage is whether the Respondent–Bidhannagar Municipal Corporation is vested with any

statutory authority under the applicable legal framework to direct Respondent No. 4, a private individual and owner of the premises in question, to carry out repairs and renovation of his building at the behest of the Petitioner, who is a lessee and is presently involved in civil litigation with Respondent No. 4 concerning eviction from the said premises. .

9. A perusal of the notice dated 24.04.2024 issued by the Executive Engineer (Building Plan) of the Respondent Municipality reveals that it does not refer to any specific provision of the law under which it was issued. However, learned Counsel for the Respondent Municipality has submitted that the said notice was purportedly issued under Section 268 of the West Bengal Municipal Corporation Act, 2006 .

10. Section 268(1) to 268(5) of the Act provides for the Commissioner's powers concerning buildings that are dangerous, ruinous, or unfit for human habitation. The relevant portion is reproduced below:

“268. Power to order demolition of buildings, dangerous, ruinous, or unfit for human habitation.

(1) Where the Commissioner, upon information in his possession, is satisfied that any building is unfit for human habitation and cannot, at a reasonable expense, be rendered fit, the Commissioner shall serve notice upon the owner and any other interested party, such as lessees or mortgagees, to show cause why the building should not be demolished.

(2) If a person so notified appears and undertakes to carry out works of improvement within a period specified by the Commissioner, or to ensure the building is not used for human habitation until it is rendered fit and the undertaking is canceled by the Commissioner, then no demolition order shall be issued.

(3) If no such undertaking is given, or if the work is not completed as undertaken, or if the building is used contrary to the terms of the undertaking, the Commissioner shall forthwith issue an order of demolition, requiring vacation within a specified period (not less than sixty days) and demolition within ninety days thereafter.

(4) If the owner or other interested person fails to demolish the building within the period specified, the Commissioner shall carry out the demolition and sell the building materials.

(5) Any demolition expenses not recoverable from the sale proceeds shall be recovered from the owner or any person having an interest in the building as arrears of tax.

11. A plain reading of the above provisions makes it clear that the authority conferred by Section 268 can only be invoked in specific statutory circumstances, namely:

- i. The Commissioner must be satisfied, based on available information, that the building is unfit for human habitation and cannot be rendered fit at a reasonable expense;
- ii. Upon such satisfaction, a show-cause notice must be served upon the owner and any other persons with an interest in the property;
- iii. If an undertaking is provided to carry out necessary improvements or to refrain from using the premises until rendered fit, demolition shall not proceed.
- iv. In the absence of such an undertaking or compliance with it, the Commissioner may order demolition.

12. Thus, before invoking Section 268, it is a statutory prerequisite that the Commissioner forms a reasoned opinion based on objective material that the building is unfit for human habitation and cannot be economically restored to a habitable condition.

13. In the present case, the notice dated 24.04.2024 issued by the Respondent Municipality does not disclose any such formation of opinion or compliance with the statutory conditions precedent under Section 268. Consequently, the notice appears to be legally unsustainable and not in consonance with the said provision.

14. Learned Counsel for the Petitioner has also referred to Section 222 of the West Bengal Municipal Act, 1993, to contend that the Municipality has the authority to issue directions for building renovation. However, the Respondent Municipality has categorically stated that the provisions of the 1993 Act are not applicable to it, as it is

now governed by the West Bengal Municipal Corporation Act, 2006. Be that as it may, Section 222 of the 1993 Act empowers the Board of Councillors to direct the repair of external parts of buildings abutting public or private streets for the sake of public aesthetics and safety. This provision is clearly not applicable to the present case, particularly because the impugned notice was not issued pursuant to any resolution or directive of the Board of Councillors.

15. Learned Counsel for the Petitioner has further sought to invoke Section 96A of the 2006 Act, as introduced by the 2009 amendment. This provision empowers the Corporation to issue notices where buildings are found to be in a dangerous or ruinous condition, requiring the owner or occupier to secure, repair, fence off, or take down such structure. However, even this provision requires a prior determination by the Corporation that the building is indeed in a dangerous or ruinous state. No such finding has been recorded or communicated in the instant case.

16. Therefore, it is evident that the notice dated 24.04.2024 issued by the Executive Engineer (Building Plan) of the Respondent Municipality was issued without jurisdiction and in the absence of any statutory authority. Accordingly, no direction can be issued by this Court for its enforcement.

17. It is evident from the record that there exists a private dispute between the Petitioner and Respondent No. 4 regarding the lease and licence agreement, which is currently sub judice before a competent Civil Court. The Petitioner, instead of pursuing appropriate remedies in the said proceedings, has attempted to secure an order indirectly compelling renovation through the instrumentality of the Municipal Corporation. The writ jurisdiction of this Court cannot be invoked or permitted to be used for the purpose of settling private disputes or for collateral purposes.

18. In view of the above, this Court is of the considered opinion that the notice dated 24.04.2024 issued by the Executive Engineer (Building Plan) of the

Respondent Municipality is without legal sanction and, therefore, unenforceable. Accordingly, the present writ petition is dismissed.

19. This Court is not unmindful of the fact that the Petitioner is an educational institution, namely a college, and if it is indeed functioning from a building that is structurally unsafe or dangerous, the same may have far-reaching implications on the safety and well-being of students, faculty, and the public at large. In view of the same, this Court deems it appropriate to direct the Respondent–Bidhannagar Municipal Corporation to undertake a prompt and proper structural assessment of the premises in question. Such assessment shall be conducted by competent technical personnel, and the Corporation shall form an objective and reasoned opinion, supported by material on record, as to whether the said building is in a ruinous, dangerous, or otherwise unfit condition for human occupation. If upon such assessment the Corporation is satisfied that the building is indeed dangerous or ruinous, it shall be at liberty to initiate appropriate proceedings, including issuing notices and taking steps for demolition or securing of the said premises, strictly in accordance with the applicable provisions of the West Bengal Municipal Corporation Act, 2006 and any other law in force.

20. With the aforesaid observations and directions, the present writ petition is disposed of.

21. Since no affidavits have been filed by the respondents, the allegations made in the writ petition shall not be deemed to have been admitted.

22. There shall be no order as to costs.

23. Let urgent Photostat certified copy of this judgment if applied for, be supplied to the parties on usual undertaking.

(Gaurang Kanth, J.)