

20.01.2025
(D/L-15 & 16)
Ct. No.15
(B.K.N.)

W.P.A. 27207 of 2024

Sabina Bibi and Ors.

Vs.

Bidhannagar Municipal Corporation & Ors.

With

WPA 23771 of 2024

Sabina Bibi and Ors.

Vs.

Bidhannagar Municipal Corporation & Ors.

Mr. Biswaroop Bhattacharya,

Mr. Sumitava Chakraborty,

Ms. Bratati Pramanick

...for the Petitioner (W.P.A. 27207 of 2024
& W.P.A. 23771 of 2024)

Ms. Munmun Ganguly,

Mr. Debangshu Dinda

...for the State Respondents (W.P.A. 27207 of 2024)

Mr. Biswabrata Basu Mallick,

Mr. Biman Halder

...for the State Respondents (W.P.A. 23771 of 2024)

Mr. Sirsanya Bandopadhyay,

Mr. Tirthankar Dey,

Ms. Arka Kr. Nag

...for the Petitioner (W.P.A. 27207 of 2024
& W.P.A. 23771 of 2024)

Mr. Habibur Rahaman,

Mr. Soumen Chatterjee,

Mr. Sumit Naskar,

Mr. N. A. Sardar,

Mr. A. Singh

...for the Private Respondent No. 8 (W.P.A. 27207 of 2024
& W.P.A. 23771 of 2024)

Mr. Shounak Bhattacharya,

Ms. Neelanjana Ghorui

...for the Respondent No. 9 to 11 (W.P.A. 23771 of 2024)

The petitioners seek to challenge a demolition order, dated 20th August 2024, issued by the Bidhannagar Municipal Corporation. The petitioners

claim to be co-owners of the relevant property and argue that the demolition proceedings were initiated and are being carried out without providing them an opportunity for a hearing.

During the proceedings of this writ petition, it was further contended that the building in question has existed for over 75 years, and only minor repairs and construction work have been undertaken. A special officer was appointed by this Court to inspect the premises and submit a report. The relevant excerpt of the special officer's report is quoted as follows:

“.....

4. I asked the petitioners as well as the private respondent no.9 who were present at the time of inspection as to whether there is any sanction plan of the building, when in turn I was told by them that there is no sanction plan since the building is 75 years old.

5. In course of inspection, statements of several persons who were present at the site of inspection were also taken. Admittedly, the second floor construction has been made recently and no sanction plan was produced in support of the said construction. The brick wall on outside of the building does not appear to be a 75 year old construction. Furthermore, from the statements given by Mr. Bipob Poddar, Sub Assistant Engineer, Bidhannagar Municipal Corporation and Mr. Abhijit Dutta Gupta, Assistant Engineer, Bidhannagar Municipal Corporation, it appears that initially when the officials of the Bidhannagar Municipal Corporation visited the site in question it was a single storied building. It has been further stated by the aforesaid officials of the Bidhannagar Municipal Corporation, that Bidhannagar Municipal Corporation had also issued a stop work notice in respect of the building in question.

....”

The petitioners have raised objections to the report by filing an affidavit.

In an earlier writ petition (W.P.A. 28538 of 2023 – Md. Surabuddin Piyada v. State of West Bengal & Ors.), the petitioner therein, who is respondent nos.8 in this matter, alleged unauthorised construction at the behest of respondents nos. 9 to 12 in the present petition, at the relevant premises. A coordinate bench of this Court, by an order dated 16th April 2024, directed the municipal corporation to issue a decision in accordance with the law, after providing notice to all necessary parties, including the petitioners.

As per this order, the corporation heard the petitioners as well as respondents nos. 9 to 12 in the earlier round of proceedings. After hearing the parties, the corporation found that the building had been constructed without an approved plan and subsequently issued the demolition order.

However, the petitioners argue that, as co-sharers of the property, they were entitled to prior notice from the corporation before the demolition order was passed. They also contend that the demolition order pertains to a property different from the one described in this writ petition. The relevant property is located at Dag No. 442, J.L. No. 14, Mouza – Hatiara,

District North 24 Parganas, and there are several constructions on plot no. 442. The petitioners assert, the demolition order was issued with respect to a different premises.

Regarding the issue of notice, this Court finds that the corporation provided the petitioners in W.P.A. 28538 of 2023 an opportunity to be heard, along with respondents nos. 8 to 12, all of whom claim ownership of the property in question.

The petitioners in this case also assert ownership of the property.

A plain reading of Section 266 of the West Bengal Municipal Corporation Act indicates that notice under the section must be served to the person responsible for the construction, which could be the owner, a co-sharer, or another party involved. Ownership, therefore, is a secondary consideration in cases of demolition of an unauthorised construction. The primary issue is identifying the person responsible for the construction.

In this case, the petitioners have failed to present any sanctioned building plan for the property in question. No such plan was produced before the corporation during the hearing. The issue of ownership

is irrelevant to the present matter since the construction is unauthorised.

Concerning the dispute over the identification of the property, it is important to note that no such dispute was raised either before the corporation or before the learned special officer, who conducted a site inspection on 23rd November 2024. The petitioners did not question the identification of the property before the corporation or the special officer. The dispute only arose in the form of objections to the special officer's report.

In light of these facts, this Court is not inclined to accept the petitioners' arguments regarding the identification of the property. Accordingly, the writ petition is dismissed. The corporation is authorised to execute the demolition order, dated 20th August 2024, in accordance with the law.

In Re: WPA 23771 of 2024

This writ petition also challenges the demolition proceedings initiated concerning the premises involved in W.P.A. 27207 of 2024, filed by the same petitioners. Given the order passed in W.P.A. 27207 of 2024, no further order is necessary in this petition.

Accordingly, this writ petition is disposed of.

(Kausik Chanda, J.)