

28.03.2025  
Item No.25  
Ct. No. 30  
Aloke

**C.O. 3994 of 2024**

**Subrata Sarkar @ Goutam  
Vs  
The Chairman, Balurghat Municipality**

Mr. Debashis Saha  
Mr. Avirup Roy Sanyal  
Ms. Sucheta Pal

**... for the petitioner**

Mr. Debjit Mukherjee  
Mr. Kaustav Bhattacharya

**... for the opposite party no. 2**

Ms. Susmita Chatterjee

**... for the opposite party no. 3**

Mr. Srijan Nayak  
Ms. Rituparna Maitra

**... for the Balurghat Municipality**

1. The present civil revisional application has been preferred against order no. 33 dated 2nd March, 2024 passed in Misc. Appeal No. 04 of 2023 by the learned District Judge, Dakshin Dinajpur at Balurghat.
2. Vide the order under challenge the District Judge on hearing the parties dismissed the appeal preferred by the petitioner herein and affirmed the order dated 15.12.2022 passed in O.C. Suit No. 30 of 2017 passed by the learned Civil Judge (Junior Division), Balurghat, Dakshin Dinajpur.
3. Vide the order dated 15.12.2022 the learned Civil Judge (Junior Division), Balurghat in O.C. Suit No. 30 of 2017 rejected the

plaintiff/petitioner's prayer for temporary injunction.

4. The petitioner in the said suit had prayed for injunction in respect of demolition notice issued by the Balurghat Municipality in respect of certain portion of the plaintiff's house on the ground that the same is unauthorized and thus illegal.
5. Learned counsel appearing for the defendant/opposite party herein submits that the parties are brothers and due to such unauthorized construction he is unable to enter the suit premises in which he too has a share after the demise of their father.
6. The plaintiff/petitioner's contention herein is that there is no unauthorized construction made by him. But in spite of such representation the Municipal Authority vide a memo being no. 04/PW-9 dated 03.04.3017 served a notice under Section 218(5) of the West Bengal Municipal Act for demolition of the said construction.
7. From the order of the learned Civil Judge (Junior Division), Balurghat it appears that the suit has been filed in respect of the said demolition order. Two other suits being O.C.

Suit No. 81 of 2009 and T.S. No. 119 of 2016 are pending.

8. It appears that the said suits are for declaration of right, title and interest of the parties herein and their shares. The present suit is filed in respect of the demolition order which has been challenged.
9. One of the contentions of the plaintiff before the learned Civil Judge (Junior Division) was that as the right, title, interest and the shares of the two brothers has not been decided by the Court in the earlier suits no order of demolition can be passed. The said contention of the petitioner is without any basis.
10. **The issue of right, title and interest is independent of the issue of demolition.**  
Admittedly, the plaintiff/petitioner is in possession of a certain portion of the suit property.
11. It is the case of the private respondent herein that the petitioner/plaintiff has made unauthorized construction causing obstruction to his entry in the suit premises in which he too has a right.
12. Copy of inspection report along with other documents including a sketch map demarketing the unauthorized construction

has been placed before the Court. But in spite of the said documents annexed, the notice dated 03.04.2017 does not contain any description or details of the alleged unauthorized construction which is to be demolished.

- 13.** It is mandatory that a notice for demolition has to specify the details/area of the portion which is to be demolished.
- 14.** A notice of demolition has to be very specific with proper measurements of the area to be demolished and has to give detailed reasons on the basis of an inspection report for which the alleged demolition is sought to be carried out.
- 15.** Principle of natural justice demands that a party should be informed as to which portion has been declared as unauthorized and which portion is to be demolished. Without such specification by way of exact measurements, a notice is incomplete and against the principle of natural justice and if permitted to remain will be an abuse of the process of law.
- 16.** On considering the said facts, the materials on record and on hearing the parties, the notice under challenge being memo no. 04/PW-9 dated 03.04.2017 issued by the

Balurghat Municipality, is hereby set aside being not in accordance with law.

**17. The Chairman, Balurghat Municipality is directed** to take necessary steps for a fresh inspection which is to be carried out by a duly appointed qualified engineer who shall conduct the inspection with due notice and in presence of both the parties. On inspection the details of the unauthorized construction, if any, is to be clearly stated in the report. Parties shall endorse the said report.

**18.** The Chairman, Balaurghat Municipality then shall act on the said report in accordance with law by issuing a comprehensive notice with **detailed specification** area (measurement) of the portion which is required to be demolished and the process of demolition shall be carried out by the Municipality following the guidelines of the Hon'ble Supreme Court in **Writ Petition (Criminal) No. 162 of 2022 and Writ Petition (Civil) No. 328 of 2022, Re: Demolition of unauthorized structures**, wherein the Court 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.”*

**19. The inspection in the present case** be carried out by the Chairman, Balurghat Municipality within 60 days from the date of this order.

**20.** As the order of demolition has been set aside by this Court the suit before the trial Court being O.C. Suit No. 30 of 2017 becomes infructuous and is also disposed of.

**21. C.O. 3994 of 2024 stands disposed of.**

**22.** All connected applications, if any, stand disposed of.

**23.** Interim order, if any, stands vacated.

**24.** Urgent photostat certified copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance of all necessary formalities.

**(Shampa Dutt (Paul), J.)**