

12.06.2025
Sl. No.01
Ct No. 3
SG

IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri

W. P. A. 1151 of 2025

Ritesh Portel
Vs.
Darjeeling Municipality and Ors.

Mr. Avinash Kankani,
Mr. Arijit Ghosh,
Mrs. Angana Rakshit.

... for the petitioner

Mr. Rajdeep Mazumder, Sr. Adv.
Mr. Avrojoyti Das,
Mr. Regan Lama,
Mr. Pritam Roy,
Mr. Rajdeep Das.

... for respondent no. 1

Mr. Billwadal Bhattacharya, Sr. Adv.
Mr. Shahbaz Ahmed,
Md. M. Khan.

... for respondent no. 6

1. Affidavit-of-service filed in Court today is taken on record.
2. The Petitioner has filed the present Writ Petition seeking a direction in the nature of mandamus to Respondents No. 1 and 2, commanding them to take appropriate steps for demolition of the unauthorised construction raised by Respondent No. 6 at Holding No. 5(5), D.B. Giri Road, Ward No. 12, Darjeeling.
3. The facts leading to the present case are as follows:
4. The Petitioner is an elected Councillor and the former Chairman of the Darjeeling Municipality. Respondent No. 6 is the owner of the premises in

question. Respondent No. 6 had applied for sanction to construct a multi-storied building on the said land, and the Darjeeling Municipality sanctioned a building plan bearing No. 18/ME dated 27.08.2021, permitting construction of a G+3 (Ground plus three floors) structure. However, in gross violation of the sanctioned plan, Respondent No. 6 proceeded to construct a G+6 building.

5. On 21.04.2022, the Petitioner, acting in his capacity as Chairman of the Darjeeling Municipality, issued a show-cause notice under Section 220(1) of the West Bengal Municipal Act, 1993, in respect of the unauthorised construction. The said notice ultimately culminated in a demolition order dated 16.09.2022, directing demolition of the unauthorised portion of the construction that exceeded the sanctioned plan.

6. Respondent No. 6 challenged the show-cause notice dated 21.04.2022 and the demolition order dated 16.09.2022 before the Court of the Civil Judge (Senior Division), Darjeeling. By judgment dated 22.06.2023, the learned Civil Court set aside both the notice and the demolition order on the ground that the power to pass a demolition order under Section 218 of the West Bengal Municipal Act vests exclusively with the Board of Councillors. The learned Court, however, granted liberty to the Municipality to proceed in accordance with law, following the proper procedure for dealing with unauthorised constructions.

7. Despite the above, no steps were taken by the Municipality to proceed under Section 218 of the Act. Consequently, the Petitioner preferred WPA No. 894/2024 before this Hon'ble Court. By order dated 29.04.2024, this Hon'ble Court directed the Municipal authorities to initiate steps for demolition of the unauthorised construction strictly in accordance with Section 218 of the West Bengal Municipal Act. The relevant portion of the said order reads as follows:

“ 6. Heard the learned Advocates appearing for the respective parties and considered the materials on record. However, without going into the controversy between the parties at this stage it would be prudent to direct the Municipal authorities to take steps in accordance with the Section 218 of the said Act especially when a show-cause notice dated 15.04.2024 has already been issued. It is made clear that the municipality through its Board of Councilors before passing any order shall act in compliance with the provisions laid down in Section 218 of the said Act and decide the issue upon giving an opportunity of hearing of all concerned including the private respondent herein. The private respondent shall be entitled to take all points and the said proceeding shall be disposed of by the Board of Councilors by passing a reasoned order.

8. With the above observations and direction the present writ petition is disposed of. There shall however, be no order to costs.”

8. Notwithstanding the clear directives of this Court, the Respondent Municipality failed to grant any hearing or initiate appropriate proceedings. Instead, the Petitioner received a copy of an order dated 05.06.2024 issued by the Chairman-in-Council, directing Respondent No. 6 to demolish the unauthorized

construction within 7 days, failing which the Municipality would undertake the demolition itself.

9. Respondent No. 6 again challenged the said order dated 05.06.2024 before the Court of the Civil Judge (Senior Division), Darjeeling, in Misc. Appeal No. 1/2024. By order dated 03.07.2024, the learned Civil Court stayed the operation of the said demolition order.

10. In these circumstances, the Petitioner has been compelled to file the present Writ Petition, seeking enforcement of the earlier directions issued by this Court and praying for the demolition of the unauthorised construction raised by Respondent No. 6.

Submission on behalf of the Petitioner

11. Mr. Kankani, learned counsel for the Petitioner, submits that the said order dated 05.06.2024 has not been passed in accordance with the procedure mandated under Section 218 of the West Bengal Municipal Act and is therefore not in compliance with the order dated 29.04.2024 passed by this Court in WPA No. 894/2024. Learned counsel for the Petitioner further submits that the Respondent Municipality is deliberately refraining from taking appropriate legal action and is, in effect, protecting the unauthorised construction.

12. It is the submission of the Learned Counsel for the Petitioner Mr. Kankani that this Court vide order dated 29.04.2024 in WPA No 894/2024 directed the Respondent Municipality to pass an order as per

Section 218 of the West Bengal Municipality Act. However, the Respondent Municipality in connivance with Respondent No. 6 passed an order dated 05.06.2024 contrary to Section 218 of the Act. As per Section 218 of the Act, the Chairman in council is not competent to pass the order, only the Board of Council was competent to pass the order. The learned civil court in the first round of litigation set aside the demolition order passed by the Chairman of the Municipality on this ground only. However, the Respondent Municipality again repeating the same mistake with the sole intention to protect the unauthorised construction of Respondent No. 6.

Submission on behalf of the respondent Municipality

13. Mr. Mazumder learned Senior Counsel appearing for the Respondent-Darjeeling Municipality, submits that there appears to be a typographical error in the order dated 05.06.2024. He further seeks to clarify that the said order itself records that the Chairman-in-Council, in its meeting held on 17.05.2024, resolved to pass the demolition order after purportedly complying with the directions issued by this Hon'ble Court in its earlier order dated 29.04.2024.

14. However, upon perusal of the records, Mr. Mazumder concedes that no decision has, in fact, been taken by the Board of Councilors in terms of Section 218 of the West Bengal Municipal Act, 1993.

15. In view of the stand taken by the Respondent Municipality, it is evident that the order dated 05.06.2024 was not passed by the Board of Councillors, as is mandatorily required under Section 218 of the West Bengal Municipal Act, 1993. This omission is in direct contravention of the directions issued by this Court in its order dated 29.04.2024 passed in WPA 894 of 2024.

16. Accordingly, the impugned order dated 05.06.2024, having been passed by the Chairman-in-Council who lacks the authority to do so under the statutory scheme, is rendered unsustainable in law and is liable to be set aside.

17. The impugned order dated 05.06.2024 is, therefore, hereby quashed and set aside.

18. The Board of Councillors of the Darjeeling Municipality is directed to consider the matter afresh and pass a reasoned order strictly in accordance with law and in compliance with the directions issued by this Court in its order dated 29.04.2024 in WPA 894 of 2024, within a period of four weeks from the date of communication of this order.

19. It is made clear that the directions contained in the earlier order shall be strictly complied with and that the Board of Councilors are directed to pass an order within a period of four weeks from the date of communication of this order.

20. With the above 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 order, if applied for, be supplied to the parties on usual undertaking.

(Gaurang Kanth, J.)