

Court No. 6
(265719)

26.08.2025
(AD 1)
(S. Banerjee)

CO 712 of 2024

Sri Subhas Chandra Dutta
Vs.
The Chairman & Board of Councillors & Anr.

Mr. Samirul Sardar
Mr. Somnath Das
...for the petitioner
Mr. Subhabrata Das
Mr. Mrinal Kanti Das
Mr. Arindam Banerjee
...for the opposite party no. 1
Mr. Amal Krishna Saha
Mr. Sankar Biswas
Mr. Debnath Mahata
Ms. Ananya Adhikary
...for the opposite party no. 2

This application under Article 227 of the Constitution of India is at the instance of the owner of an impugned construction and is directed against a judgment dated January 8, 2024 passed by the learned Civil Judge (Jr. Division), 2nd Court at Barrackpore in Municipal Appeal No. 3 of 2023. By the impugned judgment and order the municipal appeal stood dismissed.

Learned advocate appearing for the petitioner submits that without holding any inspection of the suit property, the order of demolition was passed. He submits that the construction is not an unauthorized construction and the learned Civil Judge (Jr.

Division), 2nd Court at Barrackpore, without appreciating such fact, has dismissed the municipal appeal. He submitted that the order of demolition was not passed by the Board of Councillors of the Municipality.

Record reveals that the opposite party no. 2 herein lodged a complaint before the North Barrackpore Municipality alleging illegal construction over holding no. 605 (new) within Ward No. 3 of the said municipality. Alleging inaction on the part of the municipal authority, the opposite party no. 2 filed a writ petition before this Hon'ble Court being WPA 22092 of 2022 and by an order dated November 21, 2022, the learned single judge disposed of the writ petition by directing the Board of Councillors, North Barrackpore Municipality to consider and dispose of the objection made by the petitioner therein /opposite party no. 2 herein before the Chairman on September 13, 2022 strictly in accordance with law after giving an opportunity of hearing to all the necessary parties and to pass a reasoned order and communicate the same to all the parties within the time limit as indicated in the said order. It was further observed in the said order that in the event the municipality is of the opinion that the construction has been made either in violation of the plan sanctioned or devoid of sanctioned plan, then necessary steps shall be taken

to deal with such unauthorized construction in accordance with law.

In course of hearing of this civil revision application Mr. Das, learned advocate appearing for the North Barrackpore Municipality, produces a bunch of documents including a document wherefrom it appears that the hearing took place on February 20, 2023. After going through the said document it prima facie appears to this court that the order was passed by the Chairman, North Barrackpore Municipality and not by the Board of Councillors, North Barrackpore Municipality. On a query of the court, Mr. Das submits that this is the only document which the municipality has supplied to him. Mr. Das could not produce any order of demolition passed by the Board of Councillors of the North Barrackpore Municipality. The document placed and relied upon by the Municipality though styled as 'Order' but and under the caption 'Remarks' the following has been recorded:

“ *Remarks*

As per the kind order of Honourable High Court of 21.11.2022 with a direction upon Board of Councillors, North Barrackpore Municipality to hear the matter and dispose of it as well as communicate the same to both the

parties. As directed the notice have duly been served to all concerned, date of hearing had been fixed on 20.02.2022. The petitioner and the Respondent No. (5), both of them appeared before the Board of Councillors, North Barrackpore Municipality in scheduled time. The matter is heard from both the parties and satisfied and considered and directed to the Respondent no (5) to demolish the illegal construction specifically a double storied building measuring approximately (5.50 x 4.60) sqm with 1 room & 1 bathroom at First floor and covered area at ground floor without any walls within 15 days from the date of receiving of this order.

Order to be communicated through all concerned.”

Mr. Das learned advocate appearing for the municipality further submits that after the order passed in the writ petition an inspection of the impugned construction was carried out and thereafter the Board of Councilors passed an order for demolition after hearing the petitioner as well as the opposite parties herein.

Mr. Saha, learned advocate appearing for the opposite party no. 2 submits that the impugned construction is an unauthorized construction and the same has been made without any sanctioned plan. He

submits that the municipal authorities were justified in passing the order of demolition.

For better appreciation,

Section 218 of the West Bengal Municipal Act, 1993 is extracted hereinafter :

(1) If the Board of Councilors is satisfied -

- (a) That the erection of any building
- (b) Has been commenced without obtaining sanction or permission under the law, or
 - (ii) is being carried on or has been completed otherwise than in accordance with the particulars on which such sanction or permission was based, or after such sanction or permission has been lawfully withdrawn, or
 - (iii) is being carried on or has been completed in breach of any provision contained in this Act or in the Schedule or in any rules or regulations in this behalf, or
- (b) that any building or projection exists in violation of any condition, direction or requisition lawfully given or made under this Act or the rules or the regulations made thereunder, or
- (c) that any material alteration of, or addition to, any building has been commenced or is being carried on or has been completed in breach of any provision contained in this Act or the Schedule or in any rules or regulations in this behalf.

it may, after giving the owner of the building a reasonable opportunity of being heard, make an order directing that such erection, alteration, addition or projection, as the case may be, or so much thereof as has been executed unlawfully, be demolished or altered and, upon such order, it shall be the duty of the owner to cause such demolition or alteration to the satisfaction of the Board of Councilors within such period as may

be fixed in this behalf. In default, such erection, alteration, addition or projection, as the case may be, may demolished or altered by the Board of Councilors at the expense of the said owner.”

Upon a reading of Section 218 of the 1993 Act, it is evident that it is only the Board of Councilors who are authorized to pass an order for demolition after giving the owner of the building a reasonable opportunity of being heard. The observation extracted hereinbefore under the heading ‘Remarks’ only states that the matter is heard from both the parties and satisfied and considered and directed to demolish the illegal construction. After going through the said document it appears to this court that the Chairman has issued the said document. No order of demolition passed by the Board of Councilors has been produced before this court at the time of hearing of this civil revision application.

In WPA 22092 of 2022, the Hon’ble Single Judge by an order dated November 21, 2022 directed the Board of Councilors, North Barrackpore Municipality to consider and dispose of the objection made by the petitioner before the Chairman on September 13, 2022. Thus by the said order also the Board of Councillors was directed to dispose of the objection. In the absence of any material being produced by its parties to show that the Board of Councilors has passed an order of demolition upon consideration of

the objection which was filed before the Chairman on September 13, 2022, this court is inclined to pass an interim order in view of the urgency as it has been submitted by the learned advocate appearing for the petitioner that tomorrow, i.e., August 27, 2025, is the date fixed for demolition of the building in question.

The learned Civil Judge (Jr. Division), 2nd Court at Barrackpore while deciding the appeal failed to consider as to whether the order was passed by the Board of Councilors or not. Since the statute only authorizes the Board of Councilors to pass an order of demolition, unless any document is produced before this court to show that it is the Board of Councilors who have passed the order of demolition, this court is inclined to pass any interim order.

In view thereof, there shall be an order of stay of operation of the order of demolition as well as the judgment and order dated January 8, 2024 passed by the learned Civil Judge (Jr. Division), 2nd Court at Barrackpore in Municipal Appeal No. 3 of 2023 till the end of the month of September, 2025 or until further order, whichever is earlier.

List this matter under the heading 'For Orders' on September 9, 2025.

The bunch of documents produced by Mr. Das, learned advocate appearing for the municipality, containing the inspection report, the attendance sheet, the notice of hearing as well as the remarks of the Chairman of the North Barrackpore Municipality, are taken on record.

(Hiranmay Bhattacharyya, J.)