

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Dinesh Kumar Sharma

CO 4457 of 2023

Samyabrata Guha

Vs.

**Chairperson, Board of Administrators, North
Barrackpore Municipality & Anr.**

For the petitioner:

**Mr. Debraj Bhattacharya, Adv.,
Mr. Debasish Kar, Adv.,
Mr. Saikat Ghosh, Adv.,
Mrs. Uditā Mandal, Adv.**

For the opposite party no.1:

**Mr. Subhbrata Das, Adv.,
Mr. Mrinal Kanti Das, Adv.**

Reserved on:

14.05.2026

Judgment on:

10.07.2026

Dinesh Kumar Sharma, J.:

1. Present petition has been filed challenging the order dated October 3, 2023 passed by Learned Civil Judge Junior Division 2nd Court, Barrackpore, North 24 Parganas in Misc. Appeal No. 02/2022, vide which the appeal filed by the petitioner, against the order dated October 4, 2021 and notice dated November 3, 2021 of the Chairperson Board of Administrators, North Barrackpore, was dismissed being barred by law of limitation. The petitioner aggrieved of this invoked the jurisdiction of this Court predominantly on the ground that since no limitation has been prescribed in the West Bengal Municipal Act, 1993

(hereinafter to be referred as Municipal Act), the impugned order is erroneous in law. Learned counsel further submits that no limitation has been prescribed for filing the appeal in Municipal Act, 1993. Learned counsel submitted that the Learned Trial Court has erroneously and wrongly attributed the period of limitation as provided under the Limitation Act in the present proceedings and, therefore, the same is liable to be dismissed.

Per contra, learned counsel for the opposite party no.1 North Barrackpore Municipality has submitted that the Learned Trial Court has passed a detailed and reasoned order and has rightly found that the appeal filed by the appellant was barred by limitation. Learned counsel submits that impugned order is valid in law and there is no ground to interfere in the same. Learned counsel, further, submitted relying upon the judgment of Full Bench Judgment of Madras High Court Kandaswami Pillai vs. Kannappa Chetty, AIR 1952 Mad 186, to emphasis that the Limitation Act and the code are to be read together. Learned counsel submits that it was, *inter alia*, held that both the statutes are relating to proceeding and they are *pari materia*. Learned counsel submits that, therefore, it was, *inter alia*, held that both have to be taken and construed together as being supplementary. Learned counsel has further relied upon the Constitution Bench Judgment of the Apex Court in Vidyacharan Shukla vs. Khubchand Baghel & Ors., AIR 1964 Supreme Court 1099. Learned counsel submits that, therefore, the petition is liable to be dismissed.

2. Learned Counsel for the opposite party no.2 submitted that the demolition order was passed in accordance with the law by the Board of Administrators North

Barrackpore, ordering demolition of unauthorized construction. Learned counsel submits that due process was followed by the authorities concerned. Learned counsel further submits that the municipal appeal was filed only in 2022, and the same was dismissed by the appellate authority holding that it was filed at belated stage. Learned counsel submits that the impugned order is legally sound and does not require any interference. Learned counsel further submitted that the scope of jurisdiction under Article 227 is limited and therefore, it can only be exercised when there is a manifest illegality or perversity in the order of learned Trial Court.

3. Learned counsel further submitted that the West Bengal Municipal Act, 1993 is a special statute without an express limitation period for such appeal. It was submitted in such a situation the principle of "reasonable time" shall be attributed. Reliance has been placed on M/S North Eastern Chemicals Industries Pvt. Ltd. & Anr. vs. M/S Ashok Paper Mill (Assam) Ltd. & Anr., 2023 15 SCR 821. It has further been submitted that in a case where the statute does not provide for the period of limitation, the Court is required to take a holistic assessment of the facts and circumstances of the case, so as to ascertain the possibility of delay causing prejudice to the party. Learned counsel submits that the delay in the present case is unreasonable. It has further been submitted that the demolition order passed by the authority is unimpeachable. It has been submitted as there is no jurisdictional error or perversity the present petition is liable to be dismissed.
4. Learned counsel for the parties have filed written submissions and have

advanced the detailed arguments.

5. The Court has considered the submission and perused the record carefully. It is not disputed that West Bengal Municipal Act, does not provide any period of limitation for filing an appeal under Sub-Section (3) of Section 218 the Municipal Act, 1993. Recently, the Supreme Court in M/S North Eastern Chemicals Industries Pvt. Ltd. & Anr. (supra) has considered whether Article 116 of the Limitation Act, would apply to proceedings under the Jogighopa (Assam) unit of Ashok Paper Mills Ltd. (Acquisition transfer of undertaking) date: 1990. It was not disputed that no specific time was provided in the act for preferring an appeal. It is pertinent to mention here that the appellant in this case relied upon the judgment of **Vidyacharan Shukla** (supra). The Apex Court while dealing with the **Vidyacharan Shukla** (supra) judgment, *inter alia*, held as under:

*“13. The Constitution Bench in **Vidyacharan Shukla** referred to three judgments of High Courts in **Aga Mahomed Hamadani v. Cohen** (1886) ILR 13 CAL 221, **Ramasami Pillai v. Deputy Collector of Madura** AIR 1920 Mad 107, and **Dropadi v. Hira Lal** (1912) 34 ALL 496 (FB). In each of these three decisions, the respective High Courts were tasked with the question of application of Article 156 of the Limitation Act (now Article 116) to the Burma Court’s Act, the Provincial Insolvency Act, 1907 and Land Acquisition Act, 1894 respectively. In **Cohen** (supra) it was observed that “the natural meaning of an appeal under the Civil Procedure Code appears to us to be an appeal governed by the Code of Civil Procedure so far as procedure is concerned”. In **Hira Lal** (Supra) the full bench of the Allahabad High Court observed that the objection of Section 47 thereof appears to be to attract the provisions of the Code. In **Ramasami Pillai** (supra), it was held that by virtue of Section 54, the procedure in its entirety set out in the code to govern appeals, was made applicable to the Land Acquisition Act. Similar to the above said decisions of the High Courts this Court in the said decision was also dealing with a*

statute which expressly made applicable, the provisions of the code. The holding, therefore, is that appeals provided for in special statutes that are governed by the code, can be said to be appeals under the code for the purposes of Article 116 of the Limitation Act.”

6. It is pertinent to mention here that the Court after taking into account, *inter alia*, held as under:

*“24. We further refer to observations made in **Ajaib Singh v. Sirhind Coop. Marketing-cum-Processing Service Society Ltd.** (1999) 6 SCC 82, to the effect that Courts should be wary of prescribing specific period of limitation in cases where the legislature has refrained from doing so. It was further observed that where the defence of delay is employed in a situation where no limitation is prescribed vide statute, the exact prejudice or loss suffered by the party if such a delay is condoned, must be shown on facts. In other words, in the absence of a specific limitation it would be improper for courts to dismiss a plea is solely on the ground of delay without having examined the nature of laws order prejudice caused to the other party in the facts and circumstances of the case at hand. The holding in **Ajaib Singh** (supra) was affirmed by a three-Judge Bench of this court in **Purohit & Co. v. Khatoonbee** (2017) 4 SCC 783.*

25. In light of above discussion, it is clear that when a Court is seized of a situation where no limitation stands provided either by specific applicability of the Limitation Act or the special statute governing the dispute, the Court must undertake a holistic assessment of the facts and circumstances of the case to examine the possibility of delay causing prejudice to a party. When no limitation stands prescribed it would be inappropriate for a Court to supplant the legislature’s wisdom by its own and provide a limitation, more so in accordance with what it believes to be the appropriate period. A court should, in such a situation consider in the facts and circumstances of the case at hand, the conduct of the parties, the nature of the proceeding, the length of delay, the possibility of prejudice being caused, and the scheme of the statute in question. It may be underscored here that when a party to a dispute raises a plea of delay despite no specific period being prescribed in the statute, such a party also bears the burden of demonstrating how the delay in itself would cause the party additional prejudice or loss as opposed to, the claim subject matter of dispute, being raised at an earlier point in time.”

6. Thus, the bare perusal of this makes it clear that, if the legislature has not provided any period of limitation the Court cannot dismiss an appeal solely on the ground of delay. In such cases, the Court is also required to examine the nature of concerned law and the prejudice caused to the other party.
7. Similar question also arose for consideration before this Court in Chanchal Kumar Das vs. The Chairperson Board of Administrators Rajpur Sonarpur Municipality, bearing no. CO 310 of 2022, wherein the revision petition was filed challenging the dismissal order passed by the learned Civil Judge in an appeal under Section 218(3) of the Municipal Act, 1993. The Appellate Court had dismissed the appeal on the ground of having been filed beyond the period of limitation. The Coordinate Bench of this Court after taking into account the factual matrix and the relevant provisions, *inter alia*, held as under:

“11. Section 218 (3) of the said Act provides for an appeal against the order for demolition or alteration of buildings made by the Board of Councillors under sub-section (1) thereof before the Court having jurisdiction, but no period of limitation has been prescribed for preferring such an appeal. The said appeal was filed before the appellate jurisdiction of the Court below not original, therefore, the Court below has committed an error in holding that the said appeal was preferred in the original jurisdiction of a Civil Court and consequently fell in error in importing a period of limitation for preferring the said appeal by treating it as one under Order XLIII of the Code. The Hon’ble Supreme Court in the case reported (2000) 5 Supreme Court Cases 299 (supra), relied on by Mr. Roy has clarified the position of law in this regard, excerpts from paragraph 13 of the said report being relevant, are reproduced below for ready reference:-

“13. Any law or stipulation prescribing a period of limitation to do or not to do a thing after the expiry of period so stipulated has the consequence or creation and destruction of rights and, therefore, must be specifically enacted and prescribed therefor. It is not for the courts to import any specific period of

limitation by implication, where there is really none...”

12. Notwithstanding the procedure prescribed under the Code to be followed in conducting the said appeal, the right of the said appeal emanates from the said Act, not from the Code, therefore, the Court below has committed a gross error of law in fixing a period of limitation for the said appeal equivalent to the period of limitation for an appeal from an order under Order XLIII of the Code.

13. In the absence of any specific period of limitation for preferring the said appeal, the applicability of The Limitation Act, 1963, by necessary implication, stands excluded, on this issue it would suffice to quote paragraph 4 of the decision of the Hon’ble Supreme Court reported in (1997) 6 SCC 73 (supra):-

“4. Mr. Bhasme, learned counsel for the appellant, contends that in the absence of fixation of the rule of limitation, the power can be exercised within a reasonable time and in the absence of such prescription of limitation, the power to enforce the order is vitiated by error of law. He places reliance on the decisions in State of Gujrat v. Patil Raghav Natha, Ram Chand v. Union of India and Mohd. Kavi Mohamad Amin v. Fatmabai Ibrahim. We find no force in the contention. It is seen that the order of ejectment against the applicant has become final. Section 21 of the Mamlatdar’s Court Act does not prescribe any limitation within which the order needs to be executed. In the absence of any specific limitation provided thereunder, necessary implication is that the general law of limitation provided in the Limitation Act (Act 2 of 1963) stands excluded. The Division Bench, therefore, has rightly held that no limitation has been prescribed and it can be executed at any time, especially when the law of limitation for the purpose of this appeal is not there. Where there is statutory rule operating in the field, the implied power of exercise of the right within reasonable limitation does not arise. The cited decisions deal with that area and bear no relevance to the facts.”

14. The said Act is a special statute; no period of limitation has been prescribed to exercise the right of appeal under the said Act against an order of demolition passed by the Board of Councillors of a municipality. Therefore, in view of exclusion of The Limitation Act, 1963 in respect of such an appeal, investigation as to the reasonableness of the delay in preferring the said appeal is unnecessary, consequently the decision cited by Mr. Roy reported in (2005) 7 Supreme Court Cases 667 (supra) is of no relevance in deciding the issue under consideration.

15. The point sought to be canvassed by Mr. Gayen that the life of the building plan of the petitioner has already been expired is beyond the scope of the present revisional application, as such, this Court is not inclined to probe into it. The Limitation Act, 1963 since has no manner of applicability in preferring the said appeal, the decision cited by Mr. Gayen reported in (2013) 12 Supreme Court Cases 649 (supra) is misplaced. This Court is unable to accept the submission of Mr. Gayen that the communication of the Chairman of the Municipality regarding the order of demolition passed by the Board of Councillors is equivalent to the communication of the said order by the Board itself, however the petitioner since had preferred the said appeal against the said communication of the Chairman, as per the liberty granted by the Hon'ble Division Bench, the said issue need not be stretched further. Summing up the discussions made above, this Court is of the opinion that the Court below has acted with material irregularity in holding that the said appeal was filed beyond the prescribed period of limitation, as such the order impugned is set aside, in consequence thereof the said appeal being Other Appeal No.01 of 2022 and the application for stay thereto are restored to their original file and number."

8. Perusal of the impugned order indicates that no ground has been taken by the opposite party as to the prejudice caused to them on account of delay in filing the proceedings. Similarly, there is nothing on the record to suggest that any prejudice has been caused.
9. Perusal of the impugned order indicates that the learned Appellate Court merely dismissed the appeal on the ground of limitation without taking a holistic view and the prejudice, if any, caused to the other party. The Court considers that the Coordinate Bench of this Court in Chanchal Kumar Das (supra) has taken a reasoned view that in absence of any limitation provided in the West Bengal Municipal Act, 1993, the Court cannot attribute applicability of the Limitation Act. There is nothing on record to further detain this Court in this regard. The Court considers that the impugned order is liable to be set aside. In view of the

discussions made hereinabove, the petition is allowed and the matter is remanded back to the learned Appellate Court for fresh reconsideration in accordance with law. However, the learned Trial Court shall not be debarred from taking a holistic view as well to consider the aspect of prejudice, if any, caused to the other party on account of delay in filling the appeal. Thus, the petition is allowed.

(Dinesh Kumar Sharma, J.)