

02.04.2025
Suppl. No. 3 & 4
Ct. No. 30
Aloke

**In the High Court at Calcutta
Circuit Bench at Port Blair
Revisional Jurisdiction
Appellate Side**

**RVW 5 of 2024
with
IA No. CAN 1 of 2024**

The Port Blair Municipal Council & Ors.

**Vs
S. Balu**

**In
WPA 1096 of 2023**

**S. Balun
Vs**

The Port Blair Municipal Council & Ors.

Mr. Shatadru Chakraborty
Mr. Dibesh Dwivedi

... for the petitioner

Ms. Anjili Nag

... for the respondents

1. The present review application has been preferred by the Port Blair Municipal Council praying for review/recall of the order dated 21st December, 2023, on the ground that due to incorrect instructions from the authority concerned, the learned counsel for the Port Blair Municipal Council had made erroneous submission before the Court and the Court considered the same in its order dated 21st December, 2023 (Para 5) and passed an order directing the Port Blair Municipal Council to allot an alternative shop room to the petitioner as per

specification of the shop room demolished, within a specified period.

2. Mr. Chakraborty, learned counsel appearing for the Port Blair Municipal Council has placed a document **which had not been placed by the authority concerned at the time of passing the order under review**. It is stated by relying upon **annexure-I**.

The Secretary notes was as follows :

“Further there is no plan for accommodation of any of the persons in the abovementioned vacant shops in MG Market Block No. 4.

Therefore we may if approve initiate for open auction of the 10 No. shop in MG Market, block No. 4 with the condition of reserve price Rs.15,000 p.m. and increase by 10% every year with auction call EMD 50,000/- and Security Deposit Rs.2,50,000/- for 5 years. At present this financial position of PBMC is very poor and last month deficit is 8 crores. So we have to push for auction of all left out shops to meet the development activities including payment of salaries to PBMC employers.”

3. It further appears from **annexure-J** the Secretary, PBMC on 21.11.2016 has noted therein that :

“127. Since only three persons were carrying out the business at the time of demolition of the wooden market, there cannot be any claim of those persons who have earlier left the market. It is

not clear as to why two more persons were subsequently allotted temporary shops. Further after more than 7 years we cannot keep on considering claim from those tenants. Accordingly no comprehensive proposal/scheme can be prepared and placed before FTA. Any attempt to consider such claims at this belated stage would be extending undue benefits to these selected persons. It would also be unfair to unemployed young youths who need spaces to start their business and waiting for opportunities.

128. Accordingly as suggested by RO at para-122 & 123 and by CAO at para-125, we should immediately auction these shops through open transparent bidding process.”

4. It is submitted by Mr. Chakraborty that the said documents were not with the respondent-counsel at the time of hearing to place the same before the Court, when the order under review was passed.

5. Ms. Nag, learned counsel for the petitioner has strongly objected to the submission of the Municipality.

6. Considering the materials on record and the fresh documents placed before the Court to consider the petitioner's (PBMC) prayer for review and in the alternative, prayer for recalling this Court's order dated 21.12.2023, it appears that admittedly the

petitioner had been allotted a shop as stated. That the said shop room was demolished in the year 2009 is also admitted.

7. One of the contentions of the Municipality as seen from the note of the Secretary, PBMC is that the claim of the person who had left the market prior to demolition cannot be considered, more so after more than 7 years.

8. From the said note of the Secretary, it appears that two persons were specifically allotted temporary shop even though they had left the market earlier. It is further contended that only the persons who were carrying out business at the time of demolition only their prayers would be considered. Whether the allottee had left the premises or when is not is not a point to be considered at this stage.

9. It is admitted that a shop room had been allotted to the petitioner and the same was demolished. The petitioner since then has been running from pillar to post praying for an alternative allotment as admittedly other had been accommodated.

10. Such stand on the part of the authority who have now decided to auction the vacant shop to meet the PBMC's expenses goes against **"public interest"** and thus against the principle of natural justice and such action on the part of the authorities is not to be

encouraged, which is sheer abuse of the process of law.

11. A person whose rightful allotment of a shop room has been taken away by demolition, has a right to be given an alternative space (shop room). This is the principle of law and natural justice and the authority concerned who are keepers of law, cannot take away/violate the lawful rights of the public.

12. Thus, considering the said submissions of the parties and the materials on record, it appears that at present there are vacant shops available with the Municipal Council and, as such, this Court finds no reason to review or recall the order dated 21st December, 2023, there being no error apparent on the face of record.

13. Accordingly, the Port Blair Municipal Council is directed to comply with the order dated 21.12.2023 within four weeks from the date of this order.

14. The review application being RVW 5 of 2024 is thus dismissed.

15. There will be no order as to costs.

16. All connected applications, if any, stand disposed of.

17. Interim order, if any, stands vacated.

18. 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.)