

Form No. J(2)

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

Present:

**The Hon'ble Justice Debangsu Basak**  
And  
**The Hon'ble Justice Md. Shabbar Rashidi**

**F.M.A. 4716 of 2015**

**The Bengal Fodder Mills Private Limited  
Vs.  
State of West Bengal & ors.**

For the Appellant	:	Mr. R. N. Chakraborty, Advocate Ms. Amrita De, Advocate
For the State	:	Mr. Tapan Kr. Mukherjee, Sr. Advocate Ms. Tuli Sinha, Advocate
For the Baranagar Municipality	:	Mr. Arijit Dey, Advocate
For the respondent nos.8 to 18	:	Mr. Debapriya Majumder, Adv. Ms. Jonaki Khan
Hearing on	:	19.12.2023
Judgment on	:	19.12.2023

**DEBANGSU BASAK, J.:-**

1. The appeal is directed against an order dated September 7, 2015 passed in W.P.33433(W) of 2013 by the learned Single Judge.

2. By the impugned order, the learned Single Judge returned a finding that there were illegal construction at the locale. However, the learned Judge found that, such illegal construction was not causing any threat to the life and property of any individual and therefore, the illegal construction need not be demolished.

3. Aggrieved by such findings, the writ petitioner as the appellant is before us.

4. Learned advocate appearing for the appellant submits that, factum of existence of illegal construction stands established not only in the impugned order but also from materials made available to the Court in respect of previous proceeding. He submits that, in an early round of litigation, the Division Bench directed the Municipal authorities to consider the issue of illegal construction at the locale whereupon, the Board of Councillors of the Baranagar Municipality took a resolution dated June 28, 2013 holding that there were illegal construction at the locale. Such Municipality directed demolition thereof. The Municipality did not execute its order of demolition. Consequently, the appellant as writ petitioner approached the Writ Court where the impugned order was passed.

5. Learned advocate appearing for the appellant submits the fact that illegal construction requires demolition is beyond dispute. Municipality is wrongfully raising an issue with regard to cost of demolition. He draws the attention of the Court to the provisions of Section 204A of the West

Bengal Municipal Act, 1993 as also Section 223 (4) and (5) thereof. He submits that, cost of construction should be recovered from the person responsible which is the private respondents herein.

6. Learned advocate appearing for the Municipality submits that, the writ petitioner is essentially seeking an implementation of a resolution of the Municipality taken on June 28, 2013. He refers to such resolution and submits that, the appellant was directed to demolish the unauthorized construction. The appellant did not demolish the same. The appellant did not make out a case as to why it is not in a position to carry out the demolition. He submits referring to the various provisions of the Act of 1993 particularly Section 218 thereof that, the owner of the property is required to demolish the same. The cost for demolition is to be paid by the owner. He contends that, the appellant who claims to be the owner of the property concerned, should demolish the illegal construction and in the alternative, deposit the cost of demolition.

7. Learned advocate appearing for the private respondent submits that, there is no illegal construction at the locale. He submits that, the resolution of the Board of Councillors of the Municipality was taken on June 28, 2013. With the passage of time, such illegal construction got demolished since they became dilapidated. Moreover, he submits that, the appellant can no longer claim to be the owner of the property. He refers to a notification issued by the State of West Bengal and submits

that, the ownership of the property concerned stands vested with the State.

8. Learned advocate appearing for the private respondents submits that, private respondents are economically challenged and are earning their livelihood by running shop rooms at the property concerned. Their livelihoods are at stake. The appellant is essentially a land shark who is about to grab the property for building purpose by evicting the private respondents. In the events, the construction available at the locale is directed to be demolished then the livelihood of the private respondents will not only be affected but also their tenancies will be come to an end.

9. Learned advocate for the private respondents draws the attention of the Court to the impugned order. He submits that, since there is no threat to the life and property from the so-called unauthorized construction, direction to demolish the same would be harsh and burdensome upon the private respondents.

10. We considered the rival contentions of the parties and the materials made available on record.

11. The appeal is emanating from an order passed by the learned Single Judge in a second round of litigation. The writ petition revolves around unauthorized construction and implementation of an order passed by the Board of Councillors of the Baranagar Municipality on June 28, 2013. Prior thereto, there was an earlier round of litigation where the appellant approached the Writ Court complaining of

unauthorized construction. A decision was taken by the municipality relating to removal of unauthorized construction but not at the appropriate level. On appeal, the appeal Court directed the issue of illegal construction to be visited by the appropriate authority of the municipality. The municipality at the Board of Councillors level did so and adopted a resolution dated June 28, 2013 where, they found that there were illegal constructions at the locale. The resolution directs the appellant to demolish the unauthorized construction.

12. Complaining that the municipality was not implementing such resolution, the writ petition was filed in which the impugned order was passed.

13. In the impugned order also, the learned Judge held that there was unauthorized construction but refrained from directing the demolition of the same on the ground that such illegal construction was not a threat to the life and property.

14. With respect, any unauthorized construction cannot be allowed to be retained on the ground that it is not a threat to the life and property. Inherent in any construction which is unauthorized or illegal, is a threat to life or property or both as it was not constructed in accordance with the statutory provisions or provisions regulating its constructions. Provisions regulating construction are put in place to ensure protection of life and property on any event, unauthorised construction cannot be retained. The test for directing removal of unauthorised construction is

not whether it is a threat to life and property or any of them but whether such construction violated any law or rules or regulation governing the same.

15. Factum of existence an illegal and unauthorized construction being established, the issues remaining to be decided are who will to remove the same and at whose expense. Various provisions of the Act of 1993 were placed in support of the rival contentions. We find from Section 223(4) and (5) that an unauthorized construction is to be removed at the cost and expense either by the owner or the person responsible thereof. The owner in this case did not demolish the unauthorized construction. The occupiers are not doing so.

16. In such circumstances, the municipality will proceed to demolish the unauthorized construction at the locale preferably within 6(six) weeks from date. The municipality is at liberty to recover the cost and expenses of such demolition in accordance with the provisions of Sections 223(4) and (5) of the Act of 1993.

17. There is the aspect of ownership of the appellant and the tenancy of the private respondents. As a Writ Court we need not enter into the arena as to who is the owner of the property concerned. It is the statutory obligation of the municipality to ensure that there is no illegal construction within its jurisdiction.

18. Demolition of the unauthorized construction, we hasten to add, will not erase the tenancy of the private respondents. Their tenancies

will be governed by the appropriate law governing the same. We make no comments with regard thereto.

19. We clarify that our order directing demolition of unauthorized construction is not to be construed to be speaking on the rival contentions with regard to the ownership and/or of the tenancy or extinguishing any existing tenancy or creating any tenancy at the locale concerned.

20. Impugned judgment and order dated September 7, 2015 is set aside.

21. **F.M.A. 4716 of 2015** is **disposed of** accordingly without any order as to costs.

**(Debangsu Basak,J.)**

22. I Agree.

**(Md. Shabbar Rashidi, J.)**