IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

RESERVED ON: 04.08.2025
DELIVERED ON: 13.08.2025

PRESENT:
THE HON'BLE MR. JUSTICE GAURANG KANTH

WPA 18238 OF 2024

RUKHSANA HAMID
VERSUS
STATE OF WEST BENGAL & ORS.

Appearance:-

Mr. Arup Krishna Das, Adv.
Mr. Rajarshi Ghosh, Adv.
.....For the Petitioner

Mr. Dipanjan Datta, Adv.
Mr. Debangshu Mondal, Adv.
..... For the State

Mr. Shounak Bhattacharya, Adv.
..... For the Corporation

Mr. S.K. Mondal, Adv.
..... For the Private Respondent

WITH

WPA 20449 OF 2024

RUKHSANA ZAKARIA KHAN
VERSUS
THE STATE OF WEST BENGAL & ORS.

Mr. Srijib Chakraborty, Adv.
Mr. Subhajit Mukherjee, Adv.
.....For the Petitioner

Mr. Malay Singh, Adv.
Ms. Neelam Singh, Adv.
..... For the State

Mr. Shounak Bhattacharya, Adv.
..... For the Corporation

Mr. S.K. Mondal, Adv.
..... For the Private Respondent

JUDGMENT

Gaurang Kanth, J. :-

1. The demolition order dated 04.03.2024 having Memo No. 3049/(12)/PW/Eng/24 passed by the Superintending Engineer, Asanasol Municipal Corporation in connection with demolition of a certain portion of the Nuruddin House having JL No. 20, Mouza Asanasol Municipality is in consideration in both these matters. In WPA 20449/2024, the Petitioner is challenging the said demolition order where as in 18238/2024, the Petitioner is seeking the implementation of the said demolition order. Hence this Court decided to dispose of both these matters with a common order.

Facts as per WPS 18238/2024

2. The Petitioner claims to be one of the co-sharers of the premises in question. Her case is that one *Nuruddin Mistry* was the original owner of certain plots of land situated under Mouza- Asansol Municipality, JL No. 20, recorded in Khatian Nos. 8860, 8861, 8862, 13588, 13589, 10793, 10794, 10795, 10796, 10797, 10798, 8866, 8867, 8869, 8870, 8871, 8873–8877, 22250, 22242, 22256, 22255, 22251, 22241, 22243, 22252, and 22254. The Petitioner is one of the successors-in-interest of the late Shri Nuruddin Mistry. Nuruddin House is constructed over the said property. After the death of Nuruddin Mistry, a partition suit, being Title Suit No. 92 of 2023, was instituted and is presently pending before the Court of the Civil Judge, Senior Division, Asansol, among the legal heirs of the said late Nuruddin Mistry.

3. The Petitioner in WPA No. 18238 of 2024 (*Rukhsana Hamid*), contends that private respondents Nos. 6 and 7, namely Abdulla Zakaria and Sulaiman Zakaria, commenced unauthorised construction over a portion of the aforesaid property without obtaining any valid sanctioned building plan. Accordingly, she lodged a complaint dated 29.12.2023 before the Mayor, Asansol Municipal Corporation. Pursuant to the said complaint, officials of the Respondent Municipality carried out a spot inspection and issued a "work stop" notice dated 09.01.2024 against the said private respondents.

4. Despite the issuance of the said notice, Abdulla Zakaria and Sulaiman Zakaria continued with the unauthorised construction. Consequently, the Petitioner lodged another complaint dated 12.02.2024. The Assistant Engineer, Asansol Municipal Corporation, by letter dated 17.02.2024, informed the Deputy Commissioner of Police (Central), Asansol–Durgapur Police Commissionerate, to take appropriate action against the said private respondents.

5. A hearing was thereafter conducted by the Respondent Municipality on 20.02.2024, which was attended by both the Petitioner and the private respondents. As no sanctioned building plan was produced by the private respondents, the Respondent Municipality passed a demolition order dated 04.03.2024, directing the said private respondents to demolish the unauthorised construction within seven days, failing of which the demolition would be carried out by the Municipality itself.

6. Notwithstanding the passing of the demolition order dated 04.03.2024, no demolition was carried out, either by the private respondents or by the Respondent Municipality. The Petitioner thereafter submitted a

representation dated 29.05.2025, requesting implementation of the said demolition order.

7. Aggrieved by the continued inaction of the Respondent Municipality in enforcing the demolition order dated 04.03.2024, the Petitioner has preferred the present writ petition.

Facts as per WPA No. 20449/2024

8. The Petitioner is the recorded owner of the premises wherein the property known as *Nuruddin House* is situated, her name being duly reflected in the Record of Rights. On 24.07.2024, she was informed by officials of the Respondent Municipality that a demolition order had been passed in respect of a portion of *Nuruddin House*. Upon request, she was furnished with a copy of the demolition order dated 04.03.2024, from which she learnt that her sons, Abdulla Zakaria and Sulaiman Zakaria, had allegedly carried out illegal and unauthorised construction in the said premises, and that the order pertained to such alleged unauthorised construction.

9. The Petitioner states that the building in question originally belonged to the great grandfather of her husband. She was married in the year 1975 and has resided in the premises since then. According to her, *Nuruddin House* is approximately 100 years old, and certain portions had, over time, fallen into a dilapidated and ruinous condition, making them uninhabitable. She asserts that only limited renovation work was undertaken to render those portions habitable.

10. After the death of her husband in 2021, the Petitioner's relationship with her sons deteriorated, and she began to reside separately from them. She avers that due to natural calamities, the portion of the building where she currently lives has also become dilapidated, and she has carried out only

such renovation work as is permissible in law. The Petitioner contends that, despite being the recorded owner of the premises, she was neither afforded an opportunity of hearing nor served with any notice prior to the passing of the demolition order. She further points out that the order does not specify which portion of the building is alleged to be unauthorised.

11. Upon receiving the order, she addressed a letter dated 25.07.2024 to the Respondent–Municipality seeking clarification and redress, but no action was taken. Aggrieved by such inaction, the Petitioner has filed the present writ petition.

Submission on behalf of the Petitioner in 20449/2024 (Rukhsana Zakaria Khan)

12. Learned Counsel for the Petitioner submits that the Petitioner is the recorded owner of the premises known as *Nuruddin House*, her name being duly reflected in the Record of Rights. Despite this, the impugned demolition order dated 04.03.2024 has been passed without serving any notice upon her, without summoning her for spot inspection, without issuing any "stop work" notice, and without affording her any opportunity of hearing. It is contended that such omission strikes at the very root of the proceedings and amounts to a clear violation of the principles of natural justice, rendering the impugned order liable to be set aside on this ground alone.

13. It is further submitted that the impugned demolition order has been issued by the Superintending Engineer, Asansol Municipal Corporation. Section 266 of the West Bengal Municipal Corporation Act, 2006, expressly vests the power to pass a demolition order in the Commissioner, and there is no provision under the Act which permits delegation of such power to a

subordinate officer. The Petitioner therefore contends that the impugned order has been passed wholly without jurisdiction and is *void ab initio*.

14. The Petitioner further argues that the impugned order suffers from vagueness and ambiguity inasmuch as it does not specify the exact portion of the premises alleged to be unauthorised. *Nuruddin House* is a large, approximately 100 year-old building, and without a sketch map, site plan, or any form of identification annexed to the order, the alleged illegal construction cannot be precisely ascertained. In the absence of such clarity, the order is incapable of lawful execution and stands vitiated in law.

15. Learned Counsel also points out that the Petitioner has been residing separately from her sons, Abdulla Zakaria and Sulaiman Zakaria, due to their hostile behaviour and has no connection with any unauthorised construction allegedly carried out by them. The portion of the premises under her occupation had fallen into a dilapidated condition due to natural calamities, and she undertook only lawful renovation work to make it habitable. The demolition order, insofar as it affects her portion, has therefore been passed on an erroneous assumption of fact and without affording her an opportunity to contest the allegations.

16. In support of his submissions, learned counsel for the Petitioner places reliance upon the following decisions:

(i) ***Gurunath Manohar Pavaskar v. Nagesh Siddappa Navalgund*, AIR 2008 SC 901;**

(ii) ***Chief General Manager (IPC), Madhya Pradesh Power Trading Company Ltd. v. Narmada Equipments Pvt. Ltd.*, (2021) 14 SCC 548;**

(iii) ***J.K. Cotton Spinning and Weaving Company Ltd. v. State of U.P.*, AIR 1961 SC 1170;**

(iv) ***Dharani Sugars and Chemicals Ltd. v. Union of India*****, (2019) 5 SCC 480;**

(v) ***Laddu Gopal Bajoria v. Kolkata Municipal Corporation*****, 2006 (3) CAL LT 50 (HC);**

(vi) ***Dinanath Singh v. State of West Bengal*****, WPA 12318/2025;**

(vii) ***Maniruddi Bepari v. Chairman of the Municipal Commissioners*****, reported as ILR (1936) 63 Cal 295; and**

(viii) ***State of Odisha v. Satish Kumar Ishwardas Gajbhiye*****, (2021) 17 SCC 90.**

17. In light of these submissions, it is argued that the impugned demolition order dated 04.03.2024 is illegal, arbitrary, without jurisdiction, violative of the principles of natural justice, and vitiated by vagueness. The same is therefore liable to be quashed and set aside by this Court.

Submission on behalf of the Petitioner in WPA 18238/2024 (Rukhsana Hamid)

18. Learned Counsel for the Petitioner in WPA 18238/2024 submits that the private respondents (Abdulla Zakaria and Sulaiman Zakaria) carried out unauthorised and illegal construction in contravention of the West Bengal Municipal Corporation Act, 2006. For the said construction work, no building plan has been sanctioned by the Asanasol Municipal Corporation. The Respondent Corporation has already passed the demolition order dated 04.03.2024, however, till date is no action has been taken in pursuance of the same.

19. Learned Counsel further submits that as per Section 266 of the West Bengal Municipal Corporation of the Act, 2006, the commissioner is empowered to delegate his power to his subordinate officers. Hence validly passed the demolition order dated 04.03.2024.

20. Further as per the said Act, the notice is to be given to the 'person at whose instance' the unauthorised construction is being carried out. Abdulla Zakaria and Sulaiman Zakaria are the persons who have carried out the said demolition work and hence the Respondent Corporation passed the demolition order after affording an opportunity of hearing to the said persons.

21. In view thereof, Learned Counsel for the Petitioner prays for the implementation of the impugned demolition order dated 04.03.2024.

Submission on behalf of the Respondent Corporation

22. It is submitted by the Learned Counsel for the Respondent Corporation that the Petitioner in WPA 18238/2024, namely, Rukhsana Hamid, lodged a written complaint dated 29.12.2023 alleging that Abdulla Zakaria and Sulaiman Zakaria were carrying out unauthorised construction at the premises in question. Pursuant to the said complaint, the Respondent Corporation issued a stop-work notice dated 09.01.2024 directing the said persons to forthwith cease all construction activities. However, despite service of the said notice, the unauthorised construction continued unabated. Consequently, by letter dated 17.02.2024, the Respondent Corporation requested the Deputy Commissioner of Police (Central), Asansol Durgapur Police Commissionerate, to enforce the said stop-work notice. Thereafter, a hearing was conducted by the Superintendent Engineer, Asansol Municipal Corporation, wherein both the complainant and the persons responsible for the unauthorised construction were present. Upon their failure to produce any sanctioned building plan, the impugned demolition order dated 04.03.2024 was passed, directing the removal of the unauthorised construction.

23. The Respondent Corporation has placed on record the delegation of powers issued by the Commissioner, Asansol Municipal Corporation, vide Memo No. 707-G dated 09.02.2024, in exercise of powers conferred under Section 47(3)(b) of the West Bengal Municipal Corporation Act, 2006.

24. The Respondent Corporation further submits that no notice was required to be issued to Rukhsana Zakaria Khan, Petitioner in WPA 20449/2024, inasmuch as she is neither the owner of the premises in question nor the person responsible for the unauthorised construction. The mere recording of her name in the L.R. record-of-rights neither creates nor extinguishes title, as is well-settled in law. Accordingly, her claim to notice is without legal foundation.

25. It is further the specific case of the Respondent Corporation that WPA 20449/2024 is a proxy litigation instituted at the behest of Abdulla Zakaria and Sulaiman Zakaria, in collusion with their mother, Rukhsana Zakaria Khan, with the sole intent of frustrating and obstructing the lawful demolition proceedings initiated by the Corporation.

26. In view of the aforesaid facts, submissions, and the record placed before this Hon'ble Court, the Respondent Corporation respectfully prays that WPA 20449/2024 be dismissed with costs.

Legal Analysis

27. This Court has heard the arguments advanced by the learned counsel for both parties and has carefully perused the documents placed on record.

28. The principal contention advanced on behalf of Rukhsana Zakaria Khan, (Petitioner in WPA 20449/2024), is that the Superintendent Engineer, Asansol Municipal Corporation, was not competent to pass the impugned demolition order dated 04.03.2024. It is submitted that, in terms of

Section 266 of the West Bengal Municipal Corporation Act, 2006, the power to pass a demolition order is vested exclusively upon the Commissioner. The Petitioner further submits that, under the provisos to Section 266, the Commissioner may delegate only certain powers, namely, under the first proviso, the power to issue notices and conduct hearings, and under the second proviso, the power to issue stop-work orders, to subordinate officers. However, the authority to pass a demolition order itself cannot be delegated, as such delegation is not contemplated by Section 266.

29. The learned counsel for the Respondent Corporation, however, strongly disputes this interpretation and relies upon Section 47 of the West Bengal Municipal Corporation Act, 2006, to contend that the Commissioner is empowered to delegate even the power to pass demolition orders to subordinate officers.

30. In order to properly evaluate the rival submissions, it is necessary to examine the scope and interplay of Section 266 and Section 47 of the West Bengal Municipal Corporation Act, 2006.

Section 266(1) of the West Bengal Municipal Corporation Act, 2006

"**266. Order of demolition of building or stoppage of erection of buildings in certain cases and appeal.**

(1) *Where the erection of any building or the execution of any work has been commenced, or is being carried on, or has been completed without or contrary to the sanction referred to in section 263 or in contravention of any of the provisions of this Act or the rules and the regulations made thereunder, the Commissioner may, in addition to any other action that may be taken under this Act, make an order directing that such erection or work shall be demolished' by the person at whose instance the erection or the work has been commenced or is being carried on or has been completed within such period, not being less than five days and more than fifteen days from the date on which a copy of the order of demolition with a brief statement of the reasons therefor has been delivered to such person, as may be specified in the order:*

Provided that no order of demolition shall be made unless such person has been given, by means of a notice served in such manner as the Commissioner may think fit, a reasonable opportunity of showing cause why such order shall not be made:

Provided further that where the erection or the execution has not been completed, the Commissioner may by the same order or by a separate order, whether made at the time of the issue of the notice under the first proviso or at any other time, direct such person to stop the erection or the execution until the expiry of the period within which an appeal against the order of demolition if made may be preferred under sub-section (3).

Explanation. - In this chapter, "the person at whose instance" shall mean the owner, occupier or any other person who causes the creation of any building or execution of any work to be done, including alterations or additions if any, or does it by himself.

Provided also that the Commissioner, by order, delegate his powers and functions under the first and the second proviso of this sub-section to the Special Officers, appointed by the Commissioner with the approval of the State Government on such terms and conditions as may be determined by the Corporation, and the expenses for payment of such officers shall be borne from the Municipal Fund."

Section 47 of the West Bengal Municipal Corporation Act, 2006

"**Delegation of powers and functions.**

(1) The Board of Councillors may, by resolution, delegate, subject to such conditions as may be specified in the resolution, any of its powers or functions to the Mayor-in-Council.

(2) The Mayor-in-Council may, by order, delegate, subject to such conditions as may be specified in the order, any of its powers or functions to the Mayor or to the Commissioner.

(3) Subject to such standing orders as may be made by the Mayor-in-Council in this behalf,-

(a) the Mayor may, by order, delegate, subject to such conditions as may be specified in the order, any of his powers or functions to the Deputy Mayor or to the Commissioner.

(b) the Commissioner may, by order, delegate, subject to such conditions as may be specified in the order, any of his powers or functions to any other officer or any employee of the Corporation; and

(c) any officer of the Corporation either than the Commissioner may. by order, delegate, subject to such conditions as may be specified in the order, any of his powers or functions to any officer subordinate to him.

(4) Notwithstanding anything contained in the foregoing provisions of this section, the Mayor-in-Council, the Mayor, the Commissioner, or the officer referred to in clause (c) of sub-section (3) shall not delegate-

(a) any of its or his powers or functions delegated to it or him under this section, or
(b) such of its or his powers or functions as may be prescribed."

31. A plain reading of Section 266 of the West Bengal Municipal Corporation Act, 2006 indicates that the power to pass demolition orders in cases of unauthorised construction is vested in the Commissioner. While the provisos to Section 266 make specific reference to the delegation of certain ancillary functions, such as issuing notices, conducting hearings, and stopping work, the section does not contain any express prohibition against the delegation of the power to issue demolition orders itself. The absence of such a prohibition must be read in harmony with the general delegation powers conferred under Section 47 of the said Act.

32. Section 47(3)(b) expressly empowers the Commissioner to delegate any of his powers or functions under the Act to subordinate officers, subject to such conditions as may be specified. This provision is couched in broad terms and applies to all powers of the Commissioner, save and except those for which the statute contains an express prohibition. Since Section 266 does not expressly restrict the delegation of demolition powers, the enabling provision of Section 47(3)(b) must be given full effect.

33. A harmonious construction of Sections 266 and 47 reveals that while Section 266 identifies the Commissioner as the primary authority competent to issue demolition orders, Section 47 prescribes the procedural mechanism by which such powers may be delegated to suitably empower subordinate officers. The legislative intent underlying these provisions is to ensure administrative efficiency and expeditious action against unauthorised constructions, an objective that would be undermined if

every demolition order were required to be personally passed by the Commissioner.

34. Furthermore, the first proviso to Section 266 vests the Commissioner with the authority to conduct hearings in relation to demolition matters. If the Petitioner's argument were to be accepted, it would result in an incongruous situation where the hearing is conducted by a subordinate officer, yet the final demolition order is passed exclusively by the Commissioner. Such a bifurcation of process is anomalous and contrary to established principles of law.

35. It is a well settled principle of statutory interpretation that where two provisions are capable of being read harmoniously, the interpretation that gives full effect to both must be adopted. In the present context, Section 266 determines the source of the power, while Section 47 lays down the mode of its lawful delegation. Accordingly, a demolition order passed by the Superintendent Engineer pursuant to a valid written delegation from the Commissioner under Section 47(3)(b), such as Memo No. 707-G dated 09.02.2024, is *intra vires*, lawful, and enforceable.

36. Learned Counsel for the Petitioner has placed reliance upon various judgments referred to in paragraph 16 hereinabove. This Court, while holding the legal principles enunciated therein in the highest regard and being in respectful agreement with the propositions so laid down, it is of the considered view that the present controversy hinges upon a core issue which is materially distinct from the questions that fell for determination in those cases. Consequently, the ratio of the cited decisions, though instructive, cannot be applied in its entirety to the facts at hand.

37. The contention of the Petitioner that the power to issue demolition orders is non-delegable is misconceived and contrary to settled legal principles. The Supreme Court has consistently recognised that, unless expressly prohibited, statutory powers including quasi-judicial powers may be delegated to subordinate authorities where the enabling statute so provides. In *Gurunath Manohar Pavaskar* (supra), the Hon'ble Court held that delegation is permissible where the statute contains a general provision authorising such delegation, provided that statutory safeguards are preserved. Similarly, in ***State of Orissa v. Commissioner of Land Records & Settlement, (1998) 7 SCC 162***, it was held that when the legislature confers a general power of delegation, it must be construed broadly to encompass all powers unless expressly excluded.

38. In the municipal governance context, in *Laddu Gopal Bajoria (Supra)* this Court, upheld the competence of subordinate municipal officers to act pursuant to powers delegated by the Commissioner, provided the delegation complies with the statute. The delegation effected through Memo No. 707-G dated 09.02.2024 is a direct exercise of the Commissioner's powers under Section 47(3)(b) of the West Bengal Municipal Corporation Act, 2006. In the absence of any express bar in Section 266 against the delegation of demolition powers, the principle of harmonious construction must prevail.

39. Consequently, the Superintendent Engineer, having acted under a valid and duly notified delegation of authority, was fully competent to issue the impugned demolition order dated 04.03.2024. The order cannot be invalidated merely because it was not personally signed by the Commissioner.

40. The second limb of the Petitioner's argument in WPA 20449/2024 is that she was not granted an opportunity of hearing prior to the issuance of the impugned demolition order, which, according to her, constitutes a violation of the principles of natural justice. The Respondent Corporation has refuted this contention by asserting that the statutory requirement of hearing was duly complied with, as the opportunity of hearing was afforded to those directly responsible for the unauthorised construction, namely, Abdullah Zakaria and Sulaiman Zakaria, the sons of the Petitioner.

41. As per Explanation to Section 266, 'the person at whose instance" shall mean the owner, occupier or any other person who causes the creation of any building or execution of any work to be done. Hence before issuing a demolition order, the Commissioner must give a "reasonable opportunity of being heard" only to the *owner*, *occupier*, or *person responsible* for the unauthorised construction. The provision does not require the Corporation to extend such an opportunity to every person with a tangential or indirect interest in the property.

42. It is undisputed that "Nuruddin House" is an old structure, and the complaint lodged by Rukhsana Hamid pertained solely to unauthorised construction carried out by Abdullah Zakaria and Sulaiman Zakaria. The demolition order concerns only this unauthorised portion and not the original building. The Petitioner herself has consistently stated that she resides separately from her sons and was unaware of the said construction. Her only stated concern is that she should not be rendered homeless as a result of the demolition.

43. It is also significant to note that Abdullah Zakaria and Sulaiman Zakaria, who admittedly undertook the unauthorised construction, never challenged the demolition order dated 04.03.2024. They participated in the hearing conducted by the Respondent Municipal Corporation but failed to produce any sanctioned building plan in respect of the disputed construction. It is not even their case that they did not make the unauthorised construction.

44. In these circumstances, the Petitioner, being merely the mother of the persons responsible and having disclaimed any connection with the unauthorised works, cannot claim to be aggrieved by the demolition order. Since the action of the Respondent Corporation is confined to the demolition of the offending structure raised by her sons, and the original Nuruddin House remains unaffected, there is no infringement of her legal rights, and the plea of violation of natural justice is without merit.

45. In view of the detailed discussion hereinabove, this Court finds no illegality, irregularity, or infirmity in the impugned demolition order dated 04.03.2024. The factual matrix clearly establishes that Abdullah Zakaria and Sulaiman Zakaria undertook unauthorised construction on the said premises without obtaining any sanctioned building plan, in blatant contravention of the provisions of the *West Bengal Municipal Corporation Act, 2006*. The Respondent Municipal Corporation, upon due compliance with the statutory mandate of affording an opportunity of hearing to the persons responsible, has rightly directed demolition of the said unauthorised structure.

46. The record reveals that the unauthorised construction is entirely attributable to the said two individuals, who neither denied their role in its

execution nor produced any lawful sanction in support thereof. The Petitioner, who claims to reside separately and disassociates herself from the acts of her sons, has failed to demonstrate any infringement of her own legal rights that could warrant judicial interference.

47. Consequently, WPA 20449/2024 is dismissed, as there are no sustainable grounds for challenge.

48. WPA 18238/2024 is allowed. The Respondent Municipal Corporation is directed to proceed forthwith with the demolition of the unauthorised structure raised by Abdullah Zakaria and Sulaiman Zakaria, strictly in accordance with law, and to ensure that the action is confined only to the offending portion without disturbing the original old structure.

49. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Gaurang Kanth, J.)

SAKIL AMED (P.A)