

(2022) 11 CAL CK 0110
Calcutta High Court (Appellate Side)
Case No: WPA No. 15950 Of 2022

Sabita Nandy

APPELLANT

Vs

Bidhannagar
Municipal Corporation
& Ors.

RESPONDENT

Date of Decision: Nov. 30, 2022

Acts Referred:

- Constitution Of India, 1950 - Article 226
- Code Of Civil Procedure, 1908 - Order 23 Rule 1, Order 23 Rule 1(3), Order 23 Rule 3, Order 23 Rule 4
- West Bengal Municipal Act, 1993 - Section 218
- West Bengal Municipal Corporation Act, 2006 - Section 3, 9, 30(1)(a), 266, 266(3), 287, 383

Hon'ble Judges: Amrita Sinha, J

Bench: Single Bench

Advocate: Arindam Banerjee, Rupayan Deb, Arka Kumar Nag, Tirthankar Dey, Rahul Karmakar, Gargi Goswami, Sounak Mukherjee, S. S. Bhutoria, Piyasi Chakraborty

Final Decision: Dismissed

Judgement

Amrita Sinha, J

The matter is being taken up for consideration as per the direction passed by the Honâ€™ble Supreme Court of India on 3rd August, 2022 in petition

for Special Leave to Appeal (C) No. 13235 of 2022.

The said Leave to Appeal was filed challenging the order dated 15th July, 2022 passed by the Honâ€™ble Division Bench of this Court in MAT 1077

of 2022 (Sabita Nandy â€™vs- The State of West Bengal & Ors.) affirming the order passed by the learned Single Judge on 11th July, 2022 in WPA

6780 of 2022 (Ganesh Chandra Patra â€"vs- The State of West Bengal & Ors.).

The aforesaid WPA 6780 of 2022 was filed by Ganesh Chandra Patra praying for implementation of the order of demolition of the unauthorised construction dated 9th February, 2018 passed by the Commissioner, Bidhannagar Municipal Corporation (â€"BMCâ€" for short).

The Court, by order dated 11th July, 2022, directed the Corporation to proceed with the demolition scheduled on 12th July, 2022, in accordance with

law. Challenging the order passed by the learned Single Judge the petitioner herein i.e. Sabita Nandy preferred appeal before the Honâ€"ble Division

Bench. By order dated 15th July, 2022 the Honâ€"ble Appeal Court was pleased not to interfere with the order of the learned Single Judge and

dismissed the appeal. The Honâ€"ble Division Bench directed that the Officer-in-Charge of the jurisdictional police station, if approached by the

officers of the BMC, shall extend cooperation for implementing the order of demolition.

Sabita Nandy challenged the said order before the Honâ€"ble Supreme Court. Being made aware of the fact that the order of demolition was under

challenge in the present writ petition being WPA 15950 of 2022, the Honâ€"ble Supreme Court was pleased to direct the learned Single Judge to

take up the said petition for consideration on merits.

The present writ petition being WPA 15950 of 2022 was filed by Sabita Nandy on 18th July, 2022 i.e. after the appeal preferred by Sabita Nandy

stood dismissed by the Honâ€"ble Division Bench on 15th July, 2022.

In the present writ petition the petitioner has prayed for a direction upon the BMC to rescind and revoke the order of demolition dated 9th February,

2018 and to rescind and revoke the report prepared by the Executive Engineer of the BMC after physical spot inspection was held on 20th February,

2017.

Facts leading to passing the order of demolition by the BMC are as follows:-

A complaint was filed by the respondent no. 5 Ganesh Chandra Patra alleging unauthorised construction made by Sabita Nandy, the petitioner herein,

in the premises situated at Mouza â€" Krishnapur, R.S. Dag No. 3845, Ward No. 26, Kolkata â€" 700102 under the jurisdiction of BMC. As the

objection raised by Ganesh Chandra Patra was not taken up for consideration by BMC, the said Ganesh Chandra Patra filed a writ petition before this Court being WP 2128 (W) of 2014.

The said writ petition was heard and disposed of by this Court on 6th March, 2014 directing the Board of Councillors, Rajarhat Gopalpur Municipality, under which the property then fell, to initiate proceedings under Section 218 of the West Bengal Municipal Act, 1993, after giving opportunity of hearing to the petitioner as well as the private respondent Sabita Nandy.

Sabita Nandy filed a writ petition before this Court in the year 2017 being WP no. 11956 (W) of 2017 by impleading Ganesh Chandra Patra as

respondent and sought for a direction upon the municipal authority to initiate demolition proceeding against the unauthorised construction made by

Ganesh Chandra Patra. The said writ petition was heard and disposed of by this Court on 8th November, 2017 directing the respondent authority i.e.

BMC to dispose of the representation by passing a reasoned order in accordance with law, after giving reasonable opportunity of hearing to the parties.

In compliance of the direction passed by the Court, spot physical inspection of the property of Sabita Nandy was conducted and the Commissioner,

BMC passed order recording, in details, the nature of deviation of the construction. The order to demolish the unauthorised construction was passed

on 9th February, 2018 directing Sabita Nandy to demolish the same within thirty days failing which the respondent authority would demolish the same

at the cost of the offending party.

Ganesh Chandra Patra filed a writ petition being WP no. 17998 (W) of 2018 before this Court seeking implementation of the order of demolition dated

9th February, 2018 passed by the Commissioner, BMC. The aforesaid writ petition was taken up for consideration by the Court on 27th September,

2018. Being apprised of the fact that an appeal had been filed by Sabita Nandy challenging the order of demolition, the Court disposed of the writ

petition by directing the appellate authority to consider and dispose of the said appeal.

On 12th January, 2022 Ganesh Chandra Patra lodged a further complaint before the Officer-in-Charge, Baguihati Police station highlighting the

unauthorised constructions made by Sabita Nandy and requested the police to take steps to stop the construction work.

A hearing was held by the Commissioner, BMC on 12th March, 2022 in compliance of the direction passed by this Court on 8th November, 2017 in

WP no. 11956 of (W) of 2017. Sabita Nandy through her learned advocate made a representation before the BMC highlighting her grievances with

regard to the unauthorised construction made by Ganesh Chandra Patra. A physical inspection was conducted by the engineers of BMC and an order

was passed on 29th March, 2022 under Section 287 of the West Bengal Municipal Corporation Act, 2006 directing Ganesh Chandra Patra to demolish

the entire 2nd floor and the terrace within four weeks.

Ganesh Chandra Patra filed a further writ petition before this Court being WPA no. 1592 of 2022 which was disposed of on 28th February, 2022 by

granting liberty to the petitioner to bring to the notice of the Corporation, the subsequent construction which have been made by Sabita Nandy after the

order of demolition dated 9th February, 2018.

Ganesh Chandra Patra again filed a writ petition being WPA 6780 of 2022 for implementation of the order of demolition. The Court directed BMC to

proceed with the demolition of the unauthorised construction made by Sabita Nandy on the scheduled date i.e. 12th July, 2022.

Petitioner is aggrieved by the order of demolition dated 9th February, 2018.

The primary contention of the petitioner is that the order of demolition passed in the year 2018 was never tested before the Court of law. On each and

every occasion the private respondent approached this Court praying for implementation of the order of demolition. While passing order for

implementing the order of demolition, the Court never had the occasion to adjudicate the legality and validity of the order of demolition. The order of

demolition was never decided on merits by the Court.

Sabita preferred appeal against the order of demolition before the Mayor of the BMC. This Court in WP 17998 (W) of 2018, in the matter of Ganesh

Chandra Patra, directed the appellate authority to dispose of the said appeal in accordance with law.

It has been submitted that the inspection report relying on which the order of demolition was passed, was never forwarded to the petitioner, and

accordingly, there has been violation of the principle of natural justice.

It has been submitted that initially the premises in question fell within the jurisdiction of the Rajarhat Gopalpur Municipality and the relevant law

according to which action could have been taken against the unauthorised construction is under the provision of the West Bengal Municipal Act, 1993.

After the jurisdiction of the Rajarhat Gopalpur Municipality got transferred and merged with the jurisdiction of BMC, the provision of the West Bengal

Municipal Corporation Act, 2006 will apply.

When the cause of action arose, the West Bengal Municipal Act, 1993 was in vogue, and as such, no steps could have been taken against the alleged

unauthorised construction made by the petitioner under the provision of the West Bengal Municipal Corporation Act, 2006.

It has been submitted that by order dated 6th March, 2014 passed in WP 2128 (W) of 2014 the Court directed the Board of Councillors, Rajarhat

Gopalpur Municipality to initiate proceeding under Section 218 of the West Bengal Municipal Act, 1993, accordingly, any steps taken by the

Commissioner, BMC in terms of the order passed by the Court, would be without jurisdiction.

It has been contended that the order passed under Section 218 of the Act of 1993 is appealable before the Court having jurisdiction. The petitioner

preferred an appeal before the Mayor of the Bidhannagar Municipal Corporation but no step was taken by the Mayor to dispose of the appeal

preferred by the petitioner.

Reliance has been placed on the repeal and savings clause of the 1993 Act. The petitioner stresses on the fact that BMC would not have jurisdiction

in the matter as the initial order was passed by the Rajarhat Gopalpur Municipality and, accordingly, any order passed by BMC is null and void in the

eye of law.

Learned advocate representing Ganesh Chandra Patra i.e. the complainant, at whose instance the demolition proceeding was initiated by the authority

relies upon Section 383 of the West Bengal Municipal Corporation Act, 2006 relating to the savings clause. It has been submitted that any proceeding

instituted or any action taken under the West Bengal Municipal Act, 1993 may be continued by the Corporation after jurisdiction of the Rajarhat

Gopalpur Municipality was transferred to the jurisdiction of BMC. It has been contended that, presently, jurisdiction of the property lies within BMC

and the WB Municipal Corporation Act, 2006 will be applicable.

It has been submitted that prior opportunity of hearing was given to Sabita and she had enough scope to defend herself. Though Sabita challenged the

order of demolition before this Court by filing WP No. 7672 (w) of 2018, but thereafter, for reasons best known to her, withdrew the same. Sabita

acted as a fence sitter and chose to sit tight over the order of demolition. The Court ought not to permit the petitioner to challenge the 2018 demolition

order in the year 2022 after the earlier writ petition challenging the same demolition order, with the same relief, was withdrawn without obtaining leave

to file afresh.

It has been argued that the private respondent is fighting for his rights for a very long time and the right of the private respondent cannot be scuttled in

the year 2022, by which time, the order of demolition attained finality.

Reference has been made to the series of illegalities committed by Sabita at the time of making construction. Prayer has been made for giving effect

to the order of demolition.

Learned advocate representing BMC relies upon the averments made by the petitioner in paragraphs 9 to 13 of the writ petition wherein the petitioner

admitted that she was all along well aware of the proceeding conducted by the BMC in the matter. BMC acted in compliance with the direction

passed by this Court on 6th March, 2014 in WP no. 2128 (W) of 2014 directing the then Rajarhat Gopalpur Municipality to proceed in the matter.

Sabita thereafter filed a writ petition being WP 7672 (W) of 2018 challenging the order of demolition passed by BMC. In the said writ petition Sabita

admitted in paragraph 11 that the alleged deviation/ departure from the authorized sanction plan may be tolerated and regularised and are not required

to be demolished.

Learned Advocate for BMC points out that, in WP 7672 (W) of 2018 Sabita contended that the order of demolition was not in accordance with the

provisions of Sections 266 & 287 of the West Bengal Municipal Corporation Act, 2006 and it is only the Commissioner who can pass an order of

demolition. In the said writ petition Sabita prayed for setting aside the impugned order of demolition. The aforesaid writ petition was thereafter

withdrawn by Sabita and no leave was sought for from the Court to challenge the said order of demolition afresh. Without the leave of the Court

Sabita cannot be permitted to challenge the said order of demolition all over again in the present writ petition.

The learned advocate relies upon the provision of Order 23 Rules 1, 3 & 4 of the Code of Civil Procedure. Sabita did not take any steps from 2018 till

2022. The writ petition at such delayed stage ought not to be maintainable.

It has been contended that the Bidhannagar Municipality came under the West Bengal Municipal Corporation Act, 2006 in June, 2015. The impugned

order of demolition was passed by the Commissioner in the year 2018. The order of demolition is appealable before the Municipal Tribunal. As the

Tribunal is not functional as yet, the petitioner approached this Court for remedy by filing the writ petition being WP 7672 (W) of 2018.

The Court by an order dated 20th January, 2017 passed in WP 2128 (W) of 2014 recorded the fact that the Rajarhat Gopalpur Municipality has

become the Bidhannagar Municipal Corporation. Section 218 of the Municipal Act, 1993 will not apply. The affairs of the new Municipal authority i.e.,

BMC are controlled by the West Bengal Municipal Corporation Act, 2006. All the rights and obligations of Rajarhat Gopalpur Municipality including

compliance of the Court's order have been taken over by BMC. The Commissioner of the Corporation was directed to file report before the

Court as to how he proposes to comply with the order dated 6th March, 2014.

By order dated 1st July, 2022, the Court, in the contempt proceeding arising out of WPA 2128 of 2014, directed that if there is no order of stay of the

demolition order, then the contemnor shall be personally present in Court. It has been submitted that the Corporation being the contemnor in the said

application is duty bound to comply the order of demolition which is yet to be stayed/ set aside or modified by any competent forum.

Submission has been made for dismissing the writ petition and permitting the Corporation to proceed with the order of demolition.

In reply to the submission made on behalf of the respondents the petitioner contends that as the earlier writ petition being WP no. 7672 (W) of 2018

was not decided by the Court on merits but was withdrawn simpliciter, accordingly, the provision of Order 23 Rules 1, 3 & 4 will not apply.

It has been submitted that the subject matter in the earlier writ petition and the present writ petition are different. Reliance has been placed on Section

9 of the West Bengal Municipal Corporation Act, 2006 which mentions that for the purpose of carrying out the provision of the Act, the Corporation,

the Mayor in Council and the Mayor are the competent authorities. The Commissioner does not have any jurisdiction to pass the order of demolition. It

has been submitted that according to Section 30 (1) (a) of the Act of 2006 the Commissioner is merely an officer of the Corporation.

The petitioner prays for setting aside the order of demolition whereas the respondents pray for dismissal of the writ petition.

I have heard and considered the rival submissions made on behalf of both the parties.

It would have been suffice to just mention that the petitioner challenges an order of demolition. The matter being hotly contested by the parties, the

Court thought it appropriate to note down the facts in details to arrive at a logical conclusion to adjudicate the issue.

It appears from the facts as narrated herein above that the petitioner, Sabita and the private respondent, Ganesh are adjacent owners of the land and

structures standing on their respective premises. Dispute cropped up between the parties when Sabita made construction allegedly in deviation of the

sanctioned plan. A complaint was lodged by Ganesh before the Rajarhat Gopalpur Municipality which had jurisdiction over the property at the relevant

point of time.

As the objection of Ganesh remained unattended, he filed a writ petition being WP 21391 (W) of 2013. The Court by order dated 18th September,

2013 disposed of the same by granting leave to Ganesh to file complaint before the municipal authority. Pursuant to the said leave, Ganesh lodged

complaint before the Municipality but as the said complaint was not considered by the municipal authority, Ganesh was compelled to file a further writ

petition being WP 2128 (W) of 2014 which stood disposed of on 6th March, 2014 directing the Board of Councillors of the Municipality to initiate

proceeding under Section 218 of the Municipal Act, 1993. The Court directed the Municipality to afford opportunity of hearing to all the parties and granted liberty to Sabita to file written objection against the complaint. If any unauthorized construction was found to have been raised, the same was directed to be demolished in accordance with law.

As the order passed by the Court on 6th March, 2014 was not complied with by the respondent authority, a contempt application being CPAN no.

2296 of 2014 was filed. At the time of consideration of the said application for contempt, it was submitted before the Court by the learned advocate

representing the authority that, the Rajarhat Gopalpur Municipality stood amalgamated with the Bidhannagar Municipal Corporation and, accordingly,

steps are to be taken by the Corporation at present in terms of the West Bengal Municipal Corporation Act, 2006. The Court permitted the

Commissioner of the Corporation to take appropriate steps in the matter.

In compliance of the direction passed by the Court in the contempt proceeding, the Commissioner BMC intimated the parties that a physical inspection

shall be conducted on 20th February, 2017 by the engineers of the Corporation. The parties were present at the time of physical inspection and it was

revealed that there were deviations and accordingly, the Commissioner of BMC passed order under Section 287 of the WB Municipal Corporation

Act, 2006 and directed the persons responsible to demolish the unauthorized construction. The order of the Commissioner records in details the

deviations from the building plan that were detected. The deviations are as follows:

1. Front open space in ground floor of the alleged building is found 900 mm whereas in sanctioned building plan it is shown 1200 mm and a cantilever

is projected at 1st floor which is not shown in sanctioned building plan.

2. On the North side of the alleged building a 450 mm cantilever is projected through the length at 1st floor and two nos. of cupboards of size 4.94m X

0.50m and 3.15m X 0.50m are present in ground floor which is not shown in the sanctioned plan.

3. On the South side, the open space in ground floor is 960 mm whereas in sanctioned building plan it is shown 1200 mm but 730 mm is projected

throughout the length at 1st floor and half landing of size 2.45m X 0.73m is projected which is not shown in the sanctioned building plan.

4. Backside open space of the building is 570 mm and no cantilever is shown at 1st floor whereas back side open space in sanctioned building plan is

2.0 m.

5. Position of septic tank is shifted from back side to North side of the building.

6. One garage is shown on sanctioned building plan which is converted to bed room.

7. One shop is shown in sanctioned building plan which is converted to two nos. of shop.

The order of demolition was duly communicated to Sabita, who being aggrieved by the order of demolition, preferred a writ petition before this Court

being WP 7672 (W) of 2018. Prayer was made for cancelling/ quashing the impugned order of demolition. In the writ petition Sabita alleged that the

order of demolition was passed without any legal basis and without affording any opportunity of hearing to her.

For reasons best known to Sabita, the said writ petition was withdrawn without obtaining any leave from the Court to file fresh writ petition on the self

same cause of action. After withdrawal of the writ petition Sabita preferred an appeal against the order of demolition before the Mayor of BMC in

July, 2018 along with an application praying for condoning the delay in preferring the appeal wherein Sabita averred that she got the knowledge of the

impugned order of demolition from the communicating letter of BMC.

In connection with the said appeal an application for stay was also filed by Sabita as late as in 7th July, 2022. In the application for stay Sabita averred

that the order of demolition was passed in connection with a writ petition filed by Ganesh. The Court in WP no. 17998 (W) of 2018, in order dated

27th September, 2018, took note of the fact that the appeal against the order of demolition preferred by the writ petitioner Sabita was pending and

accordingly directed the appellate authority to consider and dispose of the said appeal.

As the order of demolition was not implemented, Ganesh again filed an application for contempt being CPAN no. 1003 of 2019. The Court on 1st July,

2022 was left wondering as to why the order of demolition was not acted upon even though no formal order setting aside or staying the order of

demolition was passed by any competent Court or Tribunal.

As the order of demolition remained unimplemented, Ganesh filed yet another writ petition for implementation of the same. The Court, at the time of consideration of the writ petition on 11th July, 2022, considered the submission of BMC that an appeal along with an application for stay of the order of demolition was pending consideration before the Mayor and was of the opinion that according to the provisions of Section 266(3) of the West Bengal Municipal Corporation Act, 2006 the order of the Commissioner was appealable before the Municipal Building Tribunal and there was no provision in the Act for preferring appeal before the Mayor of the Corporation.

The Court opined that an appeal preferred before an authority which does not have the jurisdiction to decide the issue is non est in the eye of law.

Taking note of the fact that an application for contempt was pending, the Court directed the Corporation to proceed with the demolition on the scheduled date.

Sabita carried the order dated 11th July, 2022 in appeal being MAT 1077 of 2022 with IA CAN 1 of 2022. The Honâ€™ble Division Bench took note of all submissions made on behalf of Sabita and by order dated 15th July, 2022 was pleased to dismiss the appeal and the connected application by affirming the opinion of the Ld. Single Judge that the appeal before the Mayor was not maintainable.

The order of demolition not being implemented for a considerable period of time the Honâ€™ble Division Bench was pleased to direct the Officer-in-

Charge of the jurisdictional police station to render assistance if approached by the officers of the Corporation for implementing the same.

Challenging the order passed by the Honâ€™ble Appeal Court, Sabita preferred the special leave to appeal before the Honâ€™ble Supreme Court

when submission was made that the order of demolition was under challenge in the present writ petition being WPA 15950 of 2022. The Honâ€™ble

Supreme Court directed the appropriate Bench to decide the writ petition on merits. The present writ petition challenging the order of demolition, for

the second time, was affirmed on 18th July, 2022 i.e, after the Honâ€™ble Division Bench of this Court directed the Corporation to proceed with the implementation of the order of demolition.

The earlier writ petition filed by Sabita challenging the self-same order of demolition being WP no. 7672 (W) of 2018 stood withdrawn without

obtaining any liberty to file afresh. The respondents have relied upon the provisions of the Code of Civil Procedure mandating that fresh proceeding

cannot be instituted where the petitioner/ plaintiff withdraws the claim without permission to file afresh on the self same cause of action.

On a perusal of the earlier writ petition and the present writ petition filed by Sabita it appears that both the writ petitions have been filed challenging

the same order of demolition. The averments and the prayers made in the writ petitions are more or less similar. Though it is correct that the issues in

the earlier writ petition were not decided and the principle of res judicata will not apply, but provision of Order 23 Rule 1(3) precludes the plaintiff from

filing fresh suit on the same subject matter.

The aforesaid Rule is based on the policy to prevent institution of Suits over and over again on the self same cause of action. It is so because to put an

end to a proceeding and not to keep the issue open to be re-agitated in future. On disposal of a proceeding the parties get to know as to where they

stand and the avenues open to them to exercise their rights seeking justice. Permitting the party to reopen the issue which stood abandoned in the

earlier proceeding will lead to uncertainty and the subsequent action taken by a party may be set at naught. The bar under the Code of Civil Procedure

is very much applicable to writ petitions under Article 226 of the Constitution of India and as such, it will be highly improper to reopen an issue which

has already been settled and attained finality by the passage of time and also by the subsequent acts of the parties.

It is surprising to note that even though Sabita preferred appeal before an inappropriate forum (Mayor) in July, 2018, but thereafter she did not

proceed to pursue with the said appeal. She merely filed the same and deliberately kept it pending with the oblique intention to take advantage of filing

of the appeal at an opportune moment and shift the burden upon the Corporation in not taking steps to dispose of the same.

During the interregnum between 2018 and 2022 several other proceedings came to be initiated by Ganesh praying for implementation of the order of

demolition. Had Sabita been genuinely aggrieved by the order of demolition, then she ought to have proceeded with the appeal in its right earnest and

not merely file the same and leave it unattended. Sabita, however, was successful in getting the unauthorized construction of Ganesh demolished.

The appeal was preferred beyond the prescribed period of limitation along with an application praying for condoning the delay in preferring the same.

Sabita never cared to press the application for condoning the delay, and as such, it can be safely concluded that, the appeal has not been formally

registered in the eye of law, and as on date, no appeal has been preferred against the order of demolition.

Despite being aware of the fact that according to the provision of law, the Mayor of the Corporation is not the competent forum before which an

appeal may be preferred against the order of the Commissioner, Sabita, as late as on 7th July, 2022, filed an application for stay of the demolition order

before the Mayor.

The learned Single Judge recorded in the order dated 11th July, 2022 passed in WPA 6780 of 2022 that an appeal before any authority which does not

have jurisdiction to decide the issue is non est and the order of the Ld. Single Judge has been affirmed by the Honâ€™ble Division Bench. After the

Division Bench dismissed the appeal preferred by Sabita, the present writ petition has been filed.

The impugned order of demolition was passed after the Corporation inspected the property in presence of both the parties. Sabita, in her earlier writ

petition challenging the order of demolition, admitted that there has been deviation, but in the same breath submitted that, instead of imposing a harsh

punishment of demolition, the Corporation may regularise the said unauthorized construction. Despite filing the said writ petition, Sabita chose to

withdraw the same, that too, without obtaining any leave to file fresh writ petition on the self same cause of action.

The conduct of Sabita suggests that she was absolutely sure that after withdrawal of the writ petition she would be in a position to manage the

respondent authority not to proceed with the order of demolition. It appears that even though the order of demolition was passed in February, 2018,

Sabita was successful in withholding implementation of the said order of demolition even in the year 2022. Ganesh, on the other hand, is diligently pursuing the matter since 2007 and even after fifteen years of lodging the complaint, his grievance is yet to be redressed. An illegal act does not get legalised by the passage of time.

The Corporation also does not appear to have proceeded with the complaint of Ganesh in the proper direction. Time and again Ganesh was compelled to approach this Court for relief. Orders were passed directing the Corporation to act in accordance with law which the Corporation failed to do.

Repeated contempt applications had to be filed for implementation of the order passed by the Court. Though the Corporation opposes the prayer of

Sabita, but the action of the Corporation does not suggest that it really intends to implement the order of demolition. Had the Corporation acted with

bona fide intention, then the order of demolition would have been implemented long back. Ganesh would not have been compelled to approach this

Court on repeated occasions for implementing the order of demolition.

The Government of West Bengal by a notification dated 18.06.2015 published in the Kolkata Gazette Extraordinary constituted the municipal area of

Rajarhat Gopalpur, a Municipal Corporation area with headquarter at Bidhannagar under Section 3 of the West Bengal Municipal Corporation Act,

2006. The construction made by Sabita presently falls within the jurisdiction of the Bidhannagar Municipal Corporation and the Commissioner of the

Corporation is the competent authority to pass the order of demolition.

Proceeding was initiated against Sabita for demolition of the unauthorised construction in the year 2014 prior to the Rajarhat Gopalpur Municipality

being made part and parcel of the Bidhannagar Municipal Corporation. After the area in question was brought within the jurisdiction of the

Corporation, a fresh inspection was conducted by the men and agents of the Corporation in the presence of all the parties and demolition order was

passed on 9th February, 2018.

It appears from the documents annexed to the writ petition that Ganesh was subjected to regular threats at the instance of Sabita for standing up

against the illegal construction made by her. Ganesh lodged several complaints before the police as well as the other authorities complaining about the

threats.

It does not appear that the Corporation acted either in excess of its jurisdiction or there was any error in the decision making process in passing the

order of demolition. Principle of natural justice was duly complied with prior to passing the said order. It is evident that Sabita made construction by

not maintaining the statutory side open spaces and deviating from the sanctioned plan. The Corporation concluded that there has been deviation at the

time of making construction and, as such, passed the order of demolition.

The petitioner is trying to find out technical procedural loop holes in the act of the Commissioner, BMC in passing the order of demolition. She is trying

to take advantage of the transition of the Municipality to the Corporation. Her submission that as the cause of action arose when the 1993 Act was in

force, accordingly, action cannot be taken under the 2006 Act is absolutely misconceived. Inspection was conducted and demolition order was passed

in accordance with the 2006 Act and as such all subsequent steps are required to be taken under the Act that is currently holding the field.

Sabita is trying tooth and nail and leaving no stone unturned to hold on to the unauthorised construction. She is unsuccessfully trying to hunt out

technical flaws to save the unauthorized structure from being demolished. At this stage, it would be highly improper not to implement the order of

demolition specially after noticing the nature and extent of deviation made by Sabita at the time of making construction.

Nowadays, there is a growing tendency to make construction either in deviation of the plan sanctioned or without a sanctioned plan. In most of the

cases the illegality remains undetected and the laws relating to construction are blown in the winds. In a good number of cases, the illegality allegedly

gets mutually settled between the complainant and the wrong doer in lieu of material gain. In only a handful of cases, like the case at hand, does the

complainant persistently hold on to the complaint and cries for justice. The Court will be miserably failing in its duties if, despite noticing the deviations

made at the time of construction, does not direct the authority to implement the demolition order. If that be so, henceforth builders will not care to

follow the building rules and make construction accordingly to their sweet will and desire.

As per law, construction is to be made in accordance with the plan sanctioned and not in deviation thereof. Any portion of the structure that has been constructed in deviation of the sanctioned plan is liable to be demolished in accordance with the provisions of the Act failing which the persons responsible for making unauthorized construction would get an impetus and will look for ways and means to flout the provision of law.

Any leniency to deal with unauthorized construction will send out a very wrong message to the society at large and builders will take advantage of the same by not adhering to the statutory provisions and tend to make construction in deviation of the plan sanctioned. None will be able to muster the courage to stand up against such illegalities. The Court cannot turn a blind eye to such activities and permit the unauthorized construction to remain.

Justice must be seen to be done.

The Court is of the considered opinion that the order of demolition does not call for any interference and is liable to be implemented.

Writ petition stands dismissed.

No costs.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.