

Ramesh Chandra Dey Vs State of West Bengal

Court: Calcutta High Court

Date of Decision: Dec. 24, 2014

Acts Referred: Land Acquisition Act, 1894 " Section 17(4), 4, 5A, 6

West Bengal Land Reforms Act, 1955 " Section 4C

West Bengal Panchayat Act, 1973 " Section 23

West Bengal Town and Country (Planning and Development) Act, 1979 " Section 1, 1(3), 9, 9(1)

Hon'ble Judges: T.K. Dutt, J; R.K. Bag, J

Bench: Division Bench

Advocate: Subrata Mukhopadhyay, P.C. Pal Chowdhury and D.N. Mukherjee, Advocate for the Appellant; Tapan Kumar Mukherjee and Shukla Das Chanda, Advocate for the Respondent

Judgement

R.K. Bag, J.

This appeal is preferred by the writ petitioner challenging the order dated 3rd April, 2012 passed in WP No. 3577 (W) of 2012, by which Learned Single Judge dismissed the writ petition with cost assessed at 100 GM.

2. The backdrop of the case made out by the appellant/writ petitioner is as follows: The appellant acquired right, title and interest in 64 decimals of

land appertaining to plot nos. 6048, 6049 and 6050, Khatian no. 1951, J.L. No. 13 of Mouza Rekjuani, Police Station Rajarhat from one Sahidul

Ostagar under registered sale deed dated 20.06.1986. The appellant obtained permission from the Pradhan of Rajarhat Bishnupur, No. 1 Gram

Panchayat on 11.08.2009 for construction of double storied residential building covering an area of 1500 sq. ft. on plot no. 6049. It is contended

on behalf of the appellant that the appellant constructed 1st floor of the building on plot no. 6049 as per plan sanctioned by the Gram Panchayat.

On 22.12.2011 the respondent no. 2, New Town Kolkata Development Authority issued one notice to the appellant under Section 82 of the New

Town Kolkata Development Authority Act, 2007, calling upon the appellant to appear before the said authority on 5th January, 2012 to show

cause why the unauthorised construction made by the appellant would not be demolished. On 06.01.2012 the appellant submitted an application

before the respondent no. 2, New Town Kolkata Development Authority for regularisation of the plan sanctioned by the Gram Panchayat.

However, on 09.02.2012 the respondent no. 2, New Town Kolkata Development Authority did not accept the contention made by the appellant

and found that the building was constructed by the appellant in contravention of the provisions of the New Town Kolkata Development Act, 2007

and as such directed the appellant to demolish the said building of the appellant within 15 days from the date of the notice to the satisfaction of the

said authority, in default the said authority would demolish the said structure.

3. The appellant challenged the order of demolition of the building issued by the respondent no. 2, New Town Kolkata Development Authority on

09.02.2012 as illegal by preferring the writ petition before Learned Single Judge. Learned Single Judge did not accept the contention made on

behalf of the appellant and dismissed the writ petition on 03.04.2012. The said order of dismissal of the writ petition is under challenge by way of

appeal before this Court. On 17.04.2012 the building of the appellant was demolished by force by the officers of the respondent no. 2 with the

help of the police. With the leave of the appellate court the appellant amended the pleading of the writ petition by incorporating the fact of

demolition of the building by the respondent no. 2 on 17.04.2012 and challenged the action of the respondent no. 2 as illegal, mala fide and

without jurisdiction.

4. Mr. Subrata Mukhopadhyay, Learned Counsel appearing on behalf of the appellant contends that plot nos. 6048, 6049 and 6050 of Mouza

Rekjuani are not included in Schedule 1 of the New Town Kolkata Development Authority Act, 2007, which came into force on 28th December,

2006. The further contention of Mr. Mukhopadhyay is that the appellant has right, title and interest in and possession over plot nos. 6048, 6049

and 6050 of Mouza Rekjuani, even after coming into force of the New Town Kolkata Development Authority Act, 2007. According to Mr.

Mukhopadhyay, the Pradhan of Rajarhat Bishnupur, no. 1 Gram Panchayat had the authority to grant permission to the appellant for construction

of building on plot no. 6049 of Mouza Rekjuani under Section 23 of the West Bengal Panchayat Act, 1973. The specific submission of Mr.

Mukhopadhyay is that the procedure for demolition of the building of the appellant was not followed by the respondent no. 2, New Town Kolkata

Development Authority as laid down under Section 82(2) of the New Town Kolkata Development Authority Act, 2007. The notice dated

22.12.2011 issued to the appellant by the sanctioning authority cannot be construed as notice under Section 82 of the New Town Kolkata

Development Authority Act, 2007. The order of demolition of the building issued by the sanctioning authority of New Town Kolkata Development

Authority on 09.02.2012 is in violation of the provisions of Section 82 of the New Town Kolkata Development Authority Act, 2007 in as much as

the said order was passed without considering the representation submitted by the appellant on 06.01.2012 and without considering the

contentions made by the appellant in this regard. Mr. Mukhopadhyay has also submitted that the respondent no. 2 demolished the building of the

appellant immediately after dismissal of the writ petition without giving the appellant the opportunity to prefer appeal within the prescribed period of

limitation and thereby the respondent no. 2 and other officials of the New Town Kolkata Development Authority acted in a mala fide way.

5. Mr. Mukhopadhyay has urged this Court to consider that the appellant is all along in possession of plot nos. 6048, 6049 and 6050 of Mouza

Rekjuani after purchase of the same under registered sale deed on 20.06.1986 and the possession of the land was not taken over by the Land

Acquisition Collector. It is contended on behalf of the appellant that no notice under Section 4 of the Land Acquisition Act, 1894 was issued in

respect of the said plots of land. The appellant was not aware of any proceeding for acquisition of those plots of land under the provisions of the

Land Acquisition Act, 1894. It is also contended on behalf of the appellant that Learned Single Judge did not give the appellant/writ petitioner

opportunity to inspect the records placed before Learned Single Judge from the side of the state respondent and as such Learned Single Judge has

dismissed the writ petition without giving ample opportunity of hearing to the writ petitioner/appellant. Mr. Mukhopadhyay has also relied on one

notification dated 08.11.2012 issued by the Department of Panchayat and Rural Development, Government of West Bengal in order to put

forward the argument that the provisions of the West Bengal Panchayat Act, 1973 will be applicable on the land falling within the area of New

Town Kolkata Development Authority.

6. Mr. Asoke Kumar Banerjee, Learned Senior Counsel appearing on behalf of the respondent nos. 2, 3 and 8 relied on revisional settlement map

of Mouza Rekjuani prepared by the settlement officer under the West Bengal Estates Acquisition Act, 1953 in order to show the plots of the entire

Mouza Rekjuani under police station Rajarhat, District North 24-Parganas. By drawing the attention of the Court to plot nos. 6048, 6049 and

6050 of Mouza Rekjuani in the said revisional settlement map and by referring to sheet no. 4 of the location no. 23 of schedule 1 of the New

Town Kolkata Development Authority Act, 2007, Mr. Banerjee has pointed out that the plot nos. 6048, 6049 and 6050 fall within the encircled

areas starting from north-east corner of plot no. 5301 reading clockwise till plot no. 5034 within the area of New Town to which the New Town

Kolkata Development Authority Act, 2007 is applicable. By referring to paragraph 7 of the affidavit-in-opposition appearing in page nos. 258 and

259 of the paper book, Mr. Banerjee submits that the provisions of the West Bengal Panchayat Act, 1973 ceased to operate on the land falling

within the area and jurisdiction of New Town Kolkata Development Authority with effect from 28.12.2006. The said Learned Counsel contends

that the Pradhan of Rajarhat Bishnupur no. 1 Gram Panchayat had no authority and jurisdiction under the provisions of the West Bengal Panchayat

Act, 1973 to grant permission to the appellant for construction of building on plot no. 6049 of Mouza Rekjuani on 11.08.2009. It is also

contended that the action can be taken by the respondent no. 2 for demolition of the building of the appellant after disposal of the writ application

and before preferring any appeal by the writ petitioner within the prescribed period of limitation, because there is no bar under the law to take such

action except in a matrimonial proceeding where the respondent will have to wait for any action till the expiry of the period of limitation for

preferring appeal.

7. The contention of Mr. Banerjee is that the area of land falling within New Town project area is governed by New Town Kolkata Development

Authority Act and the vast area adjoining the said project area is notified as planning area where the provisions of the West Bengal Panchayat Act,

1973 is still applicable. The notification dated 08.11.2012 issued by the Department of Panchayat and Rural Development, Government of West

Bengal and referred to on behalf of the appellant is applicable in the area of land falling within the planning area of West Bengal Housing

Infrastructure Development Corporation. The said notification dated 08.11.2012 cannot have any application to the area of land falling within the

project area under New Town Kolkata Development Authority. According to Mr. Banerjee, the appellant was given adequate opportunity of

hearing by issuing notice under Section 82 of the New Town Kolkata Development Authority Act and by considering the representation submitted

by the appellant on 06.01.2012 for the purpose of demolition of the building constructed by the appellant on plot no. 6049 of Mouza Rekjuani

without any plan sanctioned by the New Town Kolkata Development Authority.

8. Mr. Tapan Kumar Mukherjee, Learned Senior Counsel appearing on behalf of the respondent no. 1 and 4 submits that the nature of land

appertaining to plot no. 6049 purchased by the appellant under registered sale deed dated 20.06.1986 is Shali i.e. agricultural land. The building

cannot be constructed on the said land without conversion of the said agricultural land to homestead (bastu) as laid down under Section 4C of the

West Bengal Land Reforms Act, 1955. By referring to page no. 278 of the paper book, Learned Counsel further submits that notice was issued

under Section 4 of the Land Acquisition Act, 1894 on 10.02.2005 for acquiring plot nos. 6048, 6049 and 6050 and other plots of Mouza

Rekjuani. It is mentioned in the said notice that the provisions of Section 17(4) of the Land Acquisition Act, 1894 will be applicable in respect of

those plots of land and the provisions of Section 5A of the Land Acquisition Act will not be attracted due to urgency. It is also pointed out by the

said Learned Counsel that the declaration under Section 6 of the Land Acquisition Act, 1894 was published in two daily newspapers-Ganashakti

(Vernacular Newspaper) and Asian Age (English Newspaper) as it appears from page no. 287 of the paper book. The possession of the plot nos.

6048, 6049 and 6050 was taken over by the Surveyor of the Land Acquisition Department on 10.08.2005 and the land was handed over to the

Surveyor of Planning Division, Housing Directorate, Government of West Bengal who in turn handed over the possession of the same to West

Bengal Housing Infrastructure Development Corporation (in short HIDCO). The land appertaining to plot nos. 6048, 6049 and 6050 of Mouza

Rekjuani, is, thus, vested in the state with effect from 10.08.2005 for the purpose of Rajarhat New Township project. By pointing out the entries

made in the Acknowledgement Form No. 9 appearing in page no. 288 of the paper book Learned Counsel also submits that the co-sharers of plot

nos. 6048, 6049 and 6050, J.L. No. 13 of Mouza Rekjuani have received the award passed in Land Acquisition Case No. 1353/LA4/116 of

2004-2005 by putting their signatures in the respective columns of the said plot numbers. It is contended on behalf of these respondents that the

appellant did not mutate his name in the record of the state in respect of plot nos. 6048, 6049 and 6050 of Mouza Rekjuani and as such the name

of the appellant was not recorded in the relevant record of right and other registers of the state. Naturally, the appellant did not get any personal

notice in connection with the land acquisition proceeding initiated for acquiring plot nos. 6048, 6049 and 6050 of Mouza Rekjuani. The gist of

submission made on behalf of these respondents is that the appellant had no right, title and interest in and possession over plot nos. 6048, 6049

and 6050, J.L. No. 13 of Mouza Rekjuani with effect from 10.08.2005 and the New Town Kolkata Development Authority Act, 2007 is

applicable to the said land claimed by the appellant with effect from 28.12.2006. It is also contended that in view of the provisions of Section 184

of the New Town Kolkata Development Authority Act, 2007, the said Act will prevail over the provisions of any other law for the time being in

force.

9. Mr. Sadananda Ganguly, Learned Counsel for the respondent no. 5 has adopted the submission made on behalf of other respondents. The

specific contention of this respondent is that the land appertaining to plot nos. 6048, 6049 and 6050, J.L. No. 13 of Mouza Rekjuani was

acquired under the provisions of the Land Acquisition Act, 1894 and the possession of the said land was taken over by the state after giving award

in this regard to the recorded owners of the said land and the possession of the land was taken over for the project of New Township at Kolkata.

10. Having heard the Learned Counsel representing the respective parties and on consideration of the materials on record we find that the

appellant purchased 64 decimals of land appertaining to plot nos. 6048, 6049 and 6050, Khatian No. 1951, J.L. No. 13 of Mouza Rekjuani,

Police Station Rajarhat from one Sahidul Ostagar under registered sale deed on 20.06.1986. The State Government issued notification on 10th

February, 2005 under Section 4 of the Land Acquisition Act, 1894 for acquiring the said land along with other plots of Mouza Rekjuani. The

declaration under Section 6 of the Land Acquisition Act, 1894 in respect of the said land was duly published in two daily newspapers-Ganashakti

(Vernacular Newspaper) and Asian Age (English Newspaper). It is evident from the description of the land appearing on the sale deed dated

20.06.1986 that the appellant purchased part of the plot nos. 6048, 6049 and 6050 and that the nature of plot no. 6049 is Shali i.e. agricultural

land. The entries made on Acknowledgement of Form 9 by the co-sharers of plot nos. 6048, 6049 and 6050 of J.L. No. 13, Mouza Rekjuani

indicate that they received the award in connection with Land Acquisition Case No. 1353/LA4/116 of 2004-2005. The possession of the said

land was taken over by the state on 10.08.2005 by issuing certificate of possession of the said land and by handing over the possession to the

Housing Directorate, Government of West Bengal. With the above background of facts it is relevant to point out that the appellant has failed to

produce any document to show that the name of the appellant was mutated in the records of the state in respect of the plot nos. 6048, 6049 and

6050, J.L. No. 13, Mouza Rekjuani. Since the appellant has failed to establish that the name of the appellant was recorded in the finally published

record of rights of the said land and since the co-sharers of the plots in question received the notice by putting signature on the Acknowledgement

slip in connection with the Land Acquisition Case No. 1353/LA4/116 of 2004-2005, the contention made on behalf of the appellant that the

notice of acquiring the said land was not served on the appellant has no substance.

11. It appears from the entries made in sheet no. 4 of the location no. 23 of the Schedule 1 of the New Town Kolkata Development Authority

Act, 2007 that all revisional settlement plots encircling the bounded area starting from north-east corner of plot no. 5301 reading clockwise till the

said plot no. 5301 fall within the area of New Town to which the New Town Kolkata Development Authority Act, 2007 is applicable. On perusal

of revisional settlement map of Mouza Rekjuani prepared by the settlement officer under the West Bengal Estates Acquisition Act, 1953, we find

that the plot nos. 6048, 6049 and 6050 of Mouza Rekjuani fall within the encircled area mentioned in sheet no. 4 of location no. 23 of Schedule 1

of the New Town Kolkata Development Authority Act, 2007. Accordingly, we don't find any merit in the submission made on behalf of the

appellant that the New Town Kolkata Development Authority Act, 2007 is not applicable to plot nos. 6048, 6049 and 6050 of Mouza Rekjuani.

On the contrary, it is clearly established from the revisional settlement map of Mouza Rekjuani and from the entries made in sheet no. 4 of the

location no. 23 of Schedule 1 of the New Town Kolkata Development Authority Act, 2007 that the said Act is applicable to plot nos. 6048, 6049

and 6050 of Mouza Rekjuani.

12. The contention made on behalf of the appellant is that on 11.08.2009 Rajarhat Bishnupur No. 1 Gram Panchayat granted permission to the

appellant for construction of two storied building on plot no. 6049 of Mouza Rekjuani. The question for consideration of this Court is whether

Rajarhat Bishnupur No. 1 Gram Panchayat had the authority and jurisdiction under the law to grant permission to the appellant for construction of

building on plot no. 6049 to which New Town Kolkata Development Authority Act, 2007 is applicable with effect from 28th December, 2006.

The notification dated 08.11.2012 issued by the Department of Panchayats and Rural Development, Government of West Bengal, relied on by

Learned Counsel for the appellant lays down the procedure for sanction of building plan for the building beyond the height of 15 meters falling

within Panchayat area and within the planning area of HIDCO, so that planned development can take place within the planning area of HIDCO.

On careful scrutiny of this notification dated 08.11.2012 we find that the procedure for sanction of plan for construction of building beyond the

height of 15 meters laid down in the said notification will not be applicable to the project area under NKDA (New Town Kolkata Development

Authority), because the project area under NKDA are excluded from the said notification. Mr. Asoke Kumar Banerjee, Learned Senior Counsel

has clarified that the area falling within Schedule 1 of the New Town Kolkata Development Authority Act, 2007 is the project area of NKDA and

the area adjoining the project area of NKDA notified under Section 1(3) and under Section 9(1) and (2) of the West Bengal Town and Country

(Planning and Development) Act, 1979 is the planning area of HIDCO (West Bengal Housing Infrastructure Development Corporation). The plot

nos. 6048, 6049 and 6050, J.L. No. 13 of Mouza Rekjuani under Police Station Rajarhat were notified along with other lands of Police Station

Rajarhat under sub-Section (3) of Section 1 of the West Bengal Town and Country (Planning and Development) Act, 1979 on 26.08.1999. The

said area of land was also notified under sub-section (1) read with sub-section (2) of Section 9 of the West Bengal Town and Country (Planning

and Development) Act, 1979 on 27th August, 1999 as planning area for the purpose of the said Act. However, the said land appertaining to plot

nos. 6048, 6049 and 6050, J.L. No. 13 of Mouza Rekjuani under Police Station Rajarhat was subsequently notified as the project area of New

Town Kolkata Development Authority with effect from 28.12.2006 when the said land is included in Schedule 1 of the New Town Kolkata

Development Authority Act, 2007. Since the land of the appellant appertaining to plot nos. 6048, 6049 and 6050 of Mouza Rekjuani falls within

the project area of New Town Kolkata Development Authority and since the notification dated 08.11.2012 issued by the Department of

Panchayats and Rural Development, Government of West Bengal specifically excludes the project area of NKDA, we are of the view that the

provision of the West Bengal Panchayat Act will not be applicable to the land of the appellant as contended on behalf of the appellant. Mr. Tapan

Kumar Mukherjee, Learned Senior Counsel appearing on behalf of the respondent nos. 1 and 4 referred to the provisions of Section 184 of the

New Town Kolkata Development Authority Act, 2007, which is as follows: ""Act to have overriding effect. The provisions of this Act shall have

effect notwithstanding anything to the contrary contained in any other law for the time being in force or any judgment, decree or order of any

Court, tribunal or other authority."" In view of the provisions of Section 184 of the New Town Kolkata Development Authority Act, 2007 the

provisions of the said Act will prevail over the provisions of any other law for the time being in force. This overriding effect of the New Town

Kolkata Development Authority Act, 2007 leads us to hold that the Pradhan of Gram Panchayat cannot have any authority and jurisdiction under

Section 23 or under any other provisions of the West Bengal Panchayat Act, 1973 to grant permission to the appellant for construction of building

on the land which was brought within the project area of NKDA and to which the provisions of the New Town Kolkata Development Authority

Act, 2007 is applicable with effect from 28.12.2006. The Pradhan of Rajarhat Bishnupur No. 1 Gram Panchayat granted permission to the

appellant to construct double storied building on plot no. 6049 of Mouza Rekjuani on 11.08.2009 on the basis of application submitted by the

appellant on 22.07.2009. Since the plot no. 6049 and other plots of Mouza Rekjuani belonging to the appellant were brought within the project

area of New Town Kolkata Development Authority with effect from 28.12.2006, the Pradhan of Rajarhat Bishnupur No. 1 Gram Panchayat had

no jurisdiction and authority under the law to grant permission to the appellant for construction of building on plot no. 6049 of Mouza Rekjuani on

11.08.2009. In view of our above findings, we are unable to accept the contention made on behalf of the appellant that the Pradhan of Rajarhat

Bishnupur No. 1 Gram Panchayat had the authority and jurisdiction to grant permission to the appellant for construction of building on plot no.

6049 of Mouza Rekjuani.

13. It is pertinent to point out that the appellant has failed to establish that the appellant obtained permission of the Collector for conversion of

agricultural land appertaining to plot no. 6049, Mouza Rekjuani to homestead for the purpose of construction of building on the said land, as laid

down in Section 4C of the West Bengal Land Reforms Act, 1955. Accordingly, the permission obtained by the appellant for construction of

building on plot no. 6049 of Mouza Rekjuani from the Pradhan of Rajarhat Bishnupur No. 1 Gram Panchayat is also in violation of provision of

Section 4C of the West Bengal Land Reforms Act, 1955.

14. Learned Counsel for the appellant has specifically urged this Court to consider that the appellant was not given opportunity of hearing before

issuing the order of demolition of the structure by the respondent no. 2 and the procedure laid down under Section 82 of sub-section (2) of the

New Town Kolkata Development Authority Act, 2007 was not followed by the respondent no. 2 and as such the act of demolition of the structure

on the part of the respondent no. 2 on 17.04.2012 is illegal, without jurisdiction and mala fide. It appears from the materials on record that on

22.12.2011 notice was issued by the sanctioning authority, New Town Kolkata Development Authority to the appellant calling upon him to appear

before the authority concerned on 5th January, 2012 to show cause why an order will not be passed under Section 82 of the New Town Kolkata

Development Authority Act, 2007. It is specifically mentioned in the said notice that the appellant constructed the building without any plan

sanctioned by the New Town Kolkata Development Authority. It also appears from record that on 06.01.2012 the appellant submitted an

application before the sanctioning authority, New Town Kolkata Development Authority with prayer for regularisation of the plan sanctioned by

Rajarhat Bishnupur No. 1 Gram Panchayat previously. The specific contention of Learned Counsel for the appellant is that the appellant submitted

the said application for regularisation of the plan sanctioned by the Gram Panchayat under wrong advice of some people of New Town Kolkata

Development Authority. In this connection Learned Counsel for the respondent no. 2 submits that the respondent no. 2, New Town Kolkata

Development Authority is not bound by the advice given by someone on behalf of New Town Kolkata Development Authority. Be that as it may,

the representation submitted by the appellant on 06.01.2012 goes to establish that the appellant had knowledge that the building constructed by

him on plot no. 6049 of Mouza Rekjuani was not as per plan sanctioned by the New Town Kolkata Development Authority. The order of

demolition of the said building issued by the sanctioning authority, New Town Kolkata Development Authority on 09.02.2012 indicates that the

respondent no. 2 considered the representation submitted by the appellant but did not accept the contention made on behalf of the appellant and

therefore directed the appellant to demolish the structure on plot no. 6049 within 15 days, in default the said structure will be demolished by the

authority concerned. Since the appellant had no manner of title in and possession over plot nos. 6048, 6049 and 6050 of Mouza Rekjuani and

since the said land was brought within the project area of New Town Kolkata Development Authority after acquiring the same under the

provisions of the Land Acquisition Act, 1894, we are of the view that the appellant had no manner of right in plot no. 6049 of Mouza Rekjuani and

as such the order dated 09.02.2012 issued by the sanctioning authority, New Town Kolkata Development Authority for demolition of the structure

on plot no. 6049 is legal and valid.

15. Mr. Mukhopadhyay, Learned Counsel for the appellant has specifically contended that the order of demolition of the building of the appellant

can be passed only by the Development Authority constituted under Section 3 of the New Town Kolkata Development Authority Act, 2007 and

not by the sanctioning authority of the New Town Kolkata Development Authority as is done in the instant case. Section 3(2) of the New Town

Kolkata Development Authority Act, 2007 lays down that the Development Authority shall consist of (a) Chairman (b) a Member Secretary and

(c) such other members, not exceeding 7, as the State Government may deem fit. It is crystal clear from the above provision of Section 3(2) of the

New Town Kolkata Development Authority Act, 2007, that the Chairman is the head of the Development Authority. The ""sanctioning authority

under Rule 2 (zn) of the New Town Kolkata (Building) Rules, 2009 means ""the Chairman of the Development Authority or such other officer of

the Development Authority who may be empowered as such by Chairman of the Development Authority, by order."" So the ""sanctioning authority

under the Rules of 2009 framed under Section 159 read with Section 65 of the New Town Kolkata Development Authority Act, 2007 is the

Chairman of the Development Authority or any officer of the Development Authority empowered by the Chairman of the Development Authority.

The notice dated 22.12.2011 and the order dated 09.02.2012 were issued by the sanctioning authority, New Town Kolkata Development

Authority, which implies the Chairman of the New Town Kolkata Development Authority as laid down under Section 3 of the New Town Kolkata

Development Authority Act, 2007. So, the argument advanced on behalf of the appellant challenging the authority and jurisdiction of the person

issuing order under Section 82 of the New Town Kolkata Development Authority Act, 2007 has no leg to stand on.

16. The last two submissions made by Learned Counsel for the appellant are that the building of the appellant was demolished by the officers of

the respondent no. 2 without giving opportunity to the appellant to obtain any order from the Appellate Court by preferring appeal within the

prescribed period of limitation and that Learned Single Judge did not give opportunity to Learned Counsel for the appellant to go through the

record which was produced before Learned Single Judge from the side of the respondent no. 2. Since the appellant has failed to obtain any stay

order from the Hon"ble First Court or from Hon"ble Appellate Court and since there is no provision of law by which the respondent no. 2 will

have to wait for taking action against the illegal acts of the appellant till the time of preferring appeal by the appellant within the prescribed period of

limitation, we do not find any fault with the respondent in executing the order of demolition of the structure of the appellant on 17.04.2012. On

careful perusal of the order passed by Learned Single Judge on 03.04.2012 we find that Learned Single Judge relied on revisional settlement map,

gazette notification and other documents in connection with taking over possession of the land in question, which are all public documents

produced by the respondent no. 2 before Learned Single Judge. Since the appellant is well aware of the said documents produced before Learned

Single Judge as reflected from the representation submitted by the appellant before the respondent no. 2 on 06.01.2012, we are unable to accept

the contention made on behalf of the appellant that the appellant was not given ample opportunity of hearing by Learned Single Judge. The upshot

of our entire observation is that there is no merit in the appeal. Accordingly, the appeal is dismissed. The order passed by Learned Single Judge on

03.04.2012 in W.P. No. 3577 (W) of 2012 is hereby affirmed. The parties will bear their respective costs.

Urgent certified Photostat copy of the order, if applied for, be given to the parties as expeditiously as possible after compliance with necessary

formalities.