

SUPREME COURT OF INDIA**Bench: Justices B.R. Gavai and Sandeep Mehta****Date of Decision: 3rd May 2024**

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). OF 2024

(ARISING OUT OF SLP(CIVIL) NO(S). 7071 OF 2024)

DR. RANBEER BOSE & ANR. ...APPELLANT(S)**VERSUS****ANITA DAS & ANR. ...RESPONDENT(S)****Legislation:**

West Bengal Municipal (Building) Rules, 2007, Rule 50

West Bengal Municipal Act, 1993, Section 218

Subject: Appeal against the High Court's decision upholding a show cause notice issued to the appellants for alleged building violations.**Headnotes:**

Civil Law – Building Regulation Compliance – Dispute over building plan compliance involving residential property construction – High Court upheld a show cause notice based on alleged violations of Rule 50 of the West Bengal Municipal (Building) Rules, 2007 – Supreme Court questions the writ jurisdiction's exercise over what appears as a private dispute between neighbors – Sanctioned plan found to not violate building norms but issued in violation of Rule 50 – Appellants allowed to challenge the municipal enquiry report and show cause notice under the West Bengal Municipal Act, 1993 [Paras 1-15] – Contempt proceedings noted, should not prejudice fair adjudication of the dispute – Appellants granted liberty to contest the findings in municipal or civil court if necessary [Paras 11-13].

Referred Cases:

None

J U D G M E N T

Mehta, J.

1. Leave granted.
2. The appellants in this appeal seek to assail the order dated 20th February, 2024 passed by the learned Division Bench of the High Court of Calcutta in MAT No.2124 of 2023. By the said order, the learned Division Bench rejected the appeal preferred by the appellants and affirmed the order dated 5th October, 2023 passed by the learned Single Judge of the High Court of Calcutta in Contempt Petition No.694 of 2022 in WPA No. 24206 of 2019, wherein the following directions were issued:-

“Mr. Krishnendu Narayan Choudhury, Chairman, English Bazar Municipality is personally present in Court.

Time has been sought for by the learned senior advocate representing the alleged contemnor to comply the direction passed by the Court.

On such request the matter stands adjourned till 30th November 2023.

The order of the Court shall be complied and fresh affidavit of compliance be filed on the adjourned date.

On the assurance given by the learned senior advocate representing the alleged contemnor, the personal appearance of the alleged contemnor stands dispensed with for the time

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3. The appellants have raised a grievance that the directions issued by the learned Single Judge in the contempt petition have a direct bearing on their residential premises. It is contended that the private respondent(respondent No.1 herein), filed the writ petition before the learned Single Judge alleging that while raising the construction of the residential property, the appellants did not maintain the open spaces prescribed under Rule 50 of the West Bengal Municipal(Building) Rules, 2007(hereinafter referred to as the 'Rules of 2007') .

4. Mr. Rana Mukherjee, learned senior counsel appearing for the appellants, urged that the learned Single Judge was not justified in entertaining the writ petition which raised a purely private dispute between two neighbours. He further submitted that acting under the pressure of the contempt proceedings, the municipal authorities have issued a show cause notice to the appellants with the observation that the building raised by the appellants herein is in contravention of Rule 50 of the Rules of 2007. His contention is that there being no allegation that the building was constructed in violation of the sanctioned building plan, the notice by itself is without jurisdiction. He also urged that under the pressure of contempt proceedings, the municipal authorities are bent upon passing an adverse order for demolishing the construction raised by the appellants herein on their plot, which was in strict compliance of the sanctioned building plan. He, thus, urged that the appellants herein may be given liberty to challenge the enquiry report dated 16th October, 2023 and the show cause notice dated 24th April, 2024 by taking recourse to the provisions contained in West Bengal Municipal Act, 1993.

5. However, his submission is that the municipal authorities are likely to be prejudiced by the contempt proceedings as they are acting under the pressure thereof and thus, the appellants will not get a fair chance to contest the notice.

6. Learned counsel appearing for respondent No.1 vehemently opposed the submissions advanced by the learned counsel for the appellants. He urged that the learned Single Judge, after extensive consideration of the material available on record has found that the sanctioned building plan was violated by the appellants while raising construction of their residential premises and as such, the direction to conduct an enquiry into the matter was justified.

7. We have given our thoughtful consideration to the submissions advanced at bar and have gone through the materials placed on record.

8. We express our reservations on the exercise of writ jurisdiction by the learned Single Judge of the High Court of Calcutta in a controversy, which appears to be a purely private dispute between the appellants herein and the private respondent(respondent No.1 herein), being immediate neighbours.
9. *Prima facie*, we are of the view that if at all the private respondent(respondent No.1 herein) was aggrieved of irregularity committed, if any, in the construction raised by the appellants on their own plot, the appropriate remedy for him would have been to approach the municipal authorities and if no proper response was forthcoming, then the civil Court was the appropriate forum for ventilating the grievances of the nature which have been raised before the writ Court.
10. Be that as it may, the fact remains that now the enquiry report has been presented before the High Court of Calcutta by the municipal authorities. As per the enquiry report dated 16th October 2023, the construction made by the appellants has not been found to be in violation of the building plan and rather, it has been mentioned that the sanction plan to construct the building was granted in violation of Rule 50 of the Rules of 2007.
11. Indisputably, the appellants have a right to challenge the said enquiry report and the show cause notice. Hence, we leave the appellants at liberty to challenge the show cause notice dated 24th April, 2024 and the enquiry report(s) by resorting to the provisions contained in the West Bengal Municipal Act, 1993.
12. Needless to say that the objections so raised by the appellants will be considered and decided objectively without being prejudiced by either the pending contempt proceedings or the orders passed in the writ proceedings. It may be noted that as per sub-clause(3) of Section 218 of West Bengal Municipal Act, 1993, in case the objections raised by the appellants do not find favour of the Board of Councillors, they would have a right to file an appeal in the Court having jurisdiction.
13. The appeal is disposed of in above terms.
14. No order as to costs.
15. Pending application(s), if any, shall stand disposed of.

*Disclaimer: Always compare with the original copy of judgment from the official website.