

14.12.2020
DL-1
ns Ct.4

**WPA No.9306 of 2018
With
I.A. No.CAN 1 of 2020**

**Sri Jaideo Dhanania & Ors.
Versus
Howrah Municipal Corporation & Ors.**

Mr. Animesh Paul,
Ms. Fatima Hassan ... for petitioners.

Mr. Chayan Gupta,
Mr. Nirmalya Sengupta,
Mr. Rajesh Upadhyay,
Mr. Arka Banerjee ... for respondent no.7.

Mr. Sandipan Banerjee,
Mr. Ankit Sureka ... for HMC.

Mr. Malay Krishna De,
Mr. Abdus Salam ... For State.

This writ petition has been listed under heading "To Be Mentioned" at instance of petitioners.

Mr. Paul, learned advocate appears on behalf of petitioners and submits, there was unauthorised construction being made by private respondent. Hence, this writ petition. The Corporation concluded proceedings under section 177 of Howrah Municipal Corporation Act, 1980 and filed a report. His clients have taken out application for injunction. In paragraph 7 of the application, contents of the report have been stated. Though work was stopped, on the Corporation having issued stop work notice, presently work has again

commenced. So petitioner is seeking order of injunction. Directions for affidavits were given on 3rd October, 2018 but only two days' back, private respondent served copy of affidavit-in-opposition, merely denying and disputing statements in the writ petition.

Mr. Banerjee, learned advocate appears on behalf of the Corporation and submits, on enquiry, his client had found deviation. Section 177 proceeding was concluded and report filed. Work was stopped. Mr. Gupta, learned advocate appears on behalf of private respondent and submits, his client did not get any notice of the section 177 proceeding.

Affidavits were called for but only private respondent has filed affidavit and submission of petitioner, it is mere denial and dispute of statements in the writ petition, have been recorded above. As such, there is no impediment in deciding the writ petition at this stage.

It appears from the report that unauthorised construction has been found as have been made by private respondent. The stop work order dated 18th June, 2018 is at page 18 of the application. The demolition order dated 29th August, 2018 is at page 28 of the application. In event private respondent does not comply with the demolition order by 31st January, 2021, the Corporation will thereafter proceed to demolish in accordance with law.

At this stage, Mr. Gupta points out by reliance on order dated 6th September, 2018, passed by coordinate

Bench (Debangsu Basak, J.) subsequent to said demolition order, this order was passed requiring the Corporation to conclude the proceeding under section 177 upon giving his client opportunity of hearing, which was not done. Mr. Banerjee submits, the demolition order was passed on the section 177 proceeding, on conclusion of it. His submission is accepted over Mr. Gupta's contention based on several interlocutory orders passed by said coordinate Bench. This is because it appears from order dated 16th July, 2018, private respondent had contended upon having obtained change of advocate, on allegation that erstwhile advocate had made wrong submissions or submissions without authority. The erstwhile advocate was directed to file affidavit. Order sheet does not show that private respondent pursued the allegation contention before the coordinate Bench.

Secondly, by order dated 6th September, 2018, said coordinate Bench had recorded that Court, by order dated 31st July, 2018 had directed Howrah Municipal Corporation to invoke section 177. Said order goes on to record, it then appeared, the Corporation, even prior to 31st July, 2018, had invoked the provision and given opportunity of hearing to private respondent. Regarding the section 177 proceeding, this confusion, of private respondent having had been unauthorisedly represented, was not made or raised. Private respondent in its affidavit-in-opposition has not said that there is an order

abandoning the section 177 proceeding for there to commence a fresh proceeding, in which under said order dated 6th September, 2018, said respondent is to be given a hearing. As such, the position is clear. There was a proceeding under section 177. Private respondent was given hearing. Report was drawn up. Stop work and demolition orders stand issued.

Direction made above will be carried out by the Corporation, in event private respondent fails to demolish by 31st January, 2021.

The police through concerned police station or otherwise, if necessary, will assist the Corporation on request made, for acting in accordance with law.

The writ petition and application are disposed of.

(Arindam Sinha, J.)