

15.02.2021
SL No.27
Court No.24
(gc)

WPA 740 of 2021

**Smt. Banasri Mondal
Vs.
State of West Bengal & Ors.**

Mr. Subhasish Pachhal,
Mr. Rameshwar Sinha,
...for the Petitioner.
Mr. Sandipan Banerjee,
Mr. Ankit Sureka,
...for the Howrah Municipal
Corporation.
Mr. Sanjib Das,
Mr. Afikul Haque,
...for the Respondent Nos.10
to 14.

The petitioner alleges illegal and unauthorized construction at the premises No.157, Dewangazi Road, Bally, Howrah – 711201. An objection was lodged by the petitioner and in response to the same an inspection was conducted by the officers of the Howrah Municipal Corporation.

A note was given by the Howrah Municipal Corporation on 27th November, 2019, annexed at Page 22 of the writ petition, wherefrom it appears that on inspection of the aforesaid premises it was found that the developer already completed RCC Structural Work (Columns, Roofs etc.) up to fourth floor level even after receiving a stop work notice under Section 177(1) of the Howrah Municipal Corporation Act, 1980 on 13th September, 2019. It was mentioned in the said note that sanction has been given for construction of a G+3 storied building in the said premises.

A further report dated 26th December, 2019 has been annexed at Page 21 of the writ petition, wherefrom it appears that on inspection of the premises it was found that a G+5 storied building is standing thereon. Except flooring all other ancillary works of the said building have almost completed. Inside putty work and the plaster were continuing.

An order of demolition was passed in respect of the said property by the Howrah Municipal Corporation and steps were taken by the Howrah Municipal Corporation for demolition of the unauthorized construction but, for reasons unknown, the demolition work has not been completed till date.

The petitioner prays for an order of demolition of the unauthorized construction by executing the order passed by the Commissioner of the Howrah Municipal Corporation.

The learned Advocate representing the private respondents vociferously opposes the prayer for demolition of the said building. It has been submitted that a Title Suit has been filed by the private respondents before the learned Civil Judge (Junior Division), 3rd Court at Howrah being Title Suit No.58 of 2020 and an order has been passed by the Court on 13th January, 2020, whereby the defendants have been restrained from demolishing the construction over the suit property without giving an opportunity of hearing to the plaintiffs and without serving any notice. The said order of injunction has been extended till 2nd June, 2021.

A copy of the plaint in respect of the Title Suit No.58 of 2020 has been handed up in Court, wherefrom it appears that the petitioner and the Howrah Municipal Corporation have been impleaded as defendants in the said Suit. An averment has been made in paragraph 11 of the plaint, that as per the plan sanctioned by the Howrah Municipal Corporation, the plaintiffs have raised a complete structure over the suit property. The plaintiffs therein, i.e. the private respondents herein, even though were aware of the demolition proceeding and the order of demolition passed therein in the year 2019, filed the plaint in the year 2020, completely suppressing the fact of issuance of the notice of demolition. On the contrary, it was averred in the plaint that construction was made in accordance with the plan sanctioned by the Howrah Municipal Corporation.

The private respondents have also raised an issue of maintainability of the writ petition at the instance of the petitioner. It has been submitted that the writ petitioner does not have the locus standi to file the writ petition as she is not a party aggrieved. It has also been submitted that no order can be passed for demolition of the construction as the order of injunction is subsisting in respect of the said construction.

It has also been submitted that a case of extortion under Section 384 of the Indian Penal Code, against the petitioner as well as her husband has been registered before the Bally Police Station, being Case No.13/2020 dated 13th

January, 2020, and the same is pending consideration before the Ld. Chief Judicial Magistrate, Howrah.

The learned Advocate for the private respondents has handed up a copy of the plan originally sanctioned by the Howrah Municipal Corporation for the purpose of making construction in the said premises, wherefrom it appears that plan has been sanctioned for construction of a G+3 storied building. The inspection report by the Officers of the Howrah Municipal Corporation reveals that a G+5 storied building has been constructed in the said premises.

The contention of the private respondents that the petitioner does not have any locus standi to move the instant writ petition is not acceptable. It is the bounden duty of all citizens to abide by the laws of the country and take all necessary steps to act in accordance with law. Any responsible citizen is always free to draw the attention of the concerned statutory authority seeking prevention of commission of any illegal activity including, unauthorized construction being carried on in a given premises. It is the noble duty of a law abiding citizen to intimate the controlling authority as regards any illegal act being committed or in the process of being committed. It is practically impossible for statutory authorities to keep track of all activities that are going on in the society. The general public acts as the eyes and ears of the authorities. On receipt of any information alleging commission of an illegal or arbitrary act, the authorities should verify the same and then act

according to law. An objection raised by a stranger, alleging unauthorized construction will be maintainable to a limited extent only to check whether there has been any unauthorized construction, provided the same is not mala fide and not tainted with malice. Law is well settled that the Corporation may even take steps suo motu if any unauthorized construction is detected by them. Accordingly, the objection raised by the private respondents challenging the locus standi of the petitioner in filing the instant writ petition stands overruled.

The private respondents harp upon the order of injunction that has been passed by the learned Civil Judge. It has also been submitted that the petitioner instead of filing the written statement in the Suit has approached the writ court by filing an application under Article 226 of the Constitution of India.

The writ court is the forum to deal with any violation of constitutional as well as statutory right. A person is not entitled to raise any construction not authorized in law. Law mandates that construction can be made only after obtaining sanction from the requisite authority. In the instant case, the Howrah Municipal Corporation sanctioned the plan permitting construction of a G+3 storied building. The private respondents, under any stretch of imagination, could not have raised the construction up to the G+5th floor, without obtaining further sanction from the Howrah Municipal Corporation.

The private respondents do not have any sanction for constructing the 4th and 5th floors. The order of the Ld. Civil Judge would be restricted only to the structure constructed in accordance with the sanction plan, and would not be applicable in respect of any construction made without obtaining any sanction, otherwise unscrupulous builders will take recourse to law to hold on to the unauthorized construction and create third party rights subsequently leading to multiplicity of proceedings.

The order of the Civil Court clearly mentions that the defendants were restrained from demolishing the suit property without affording a fair opportunity to the plaintiffs and without serving any notice. It appears that an opportunity of hearing was given to the plaintiffs prior to passing the order of demolition and, accordingly, the order passed by the Civil Court will not stand in the way of the Howrah Municipal Corporation to conclude the demolition proceedings in respect of the unauthorized construction, within the time as specified hereinabove.

In view of the above, the instant writ petition is disposed of by directing the Howrah Municipal Corporation to take immediate steps to conclude the demolition proceedings initiated by them, strictly in accordance with law, at the earliest, but positively within 30th June, 2021.

The pending criminal proceedings shall proceed in usual course.

The Inspector-in-Charge of the Bally Police Station is directed to render all necessary assistance to the Howrah Municipal Corporation at the time of demolition of the unauthorized construction as directed hereinabove.

Copy of the plaint, the order passed in Title Suit No.58 of 2020 and the sanction plan in respect of the aforesaid premises, be retained with the records.

The writ petition is disposed of.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon completion of usual legal formalities.

(Amrita Sinha, J.)