Item No.12

In The High Court At Calcutta
Constitutional Writ Jurisdiction
(via video conference)

16.04.2021
Ct-24

W.P.A.651 of 2020
Rajesh Jain & Ors.
v
The Howrah Municipal Corporation & Ors.
with
IA No. CAN/1/2021
With
W.P.A.87 of 2020
Laxmi Residency Private Limitedd & Anr.
v
State of West Bengal & Ors.

Mr. Deepak Jain
Mr. Kumar Gupta
...for the petitioners in WPA 651 of 2020 and for the private respondents in WPA 87 of 2020.

None
... for the petitioners in WPA 87 of 2020 and private respondents in WPA 651 of 2020.

Mr. Sandipan Banerjee
Mr. Ankit Surekha
... for the Howrah Municipal Corporation.

Ms. Sudipa Roy
Mr. Srinath Sinha Roy
... for the State in WPA 651 of 2020.

Mr. Ziaul Islam
... for the State in WPA 87 of 2020.

WPA 651 of 2020

None appears on behalf of the private respondents.

The grievance of the petitioners is that the private respondents have constructed additional floors beyond the plan sanctioned by the Howrah Municipal Corporation.

The learned advocate for the Howrah Municipal Corporation has submitted, upon instruction, that the private respondents constructed fifth floor in an absolute unauthorized manner. The unauthorized construction was however regularized against the penalty of Rs. 32,30,293/- only as per the order of the then higher authority of the Howrah Municipal Corporation.

It has further been mentioned that some unauthorized portions were however demolished by the demolition squad in the year 2011. Later in the year 2016 sanction was sought for constructing the sixth and the seventh floors and as per the order of the then higher authority of the Howrah Municipal Corporation the same has been sanctioned.

It has been revealed in the report that construction of the additional floors, that is sixth and the seventh floors, has not started as yet. It appears from the report of the Howrah Municipal Corporation that initially sanction was for construction of G+4 storied residential building.

The fifth floor ought not to have been constructed without obtaining any permission from the Corporation.

Any construction made beyond the sanction plan remains unauthorized and the same could not be regularized even upon payment of penalty, as there is no provision in the Howrah Municipal Corporation Act for regularization of additional floors constructed without obtaining any sanction plan.

If the fifth floor remains unauthorized there is no scope for sanctioning the sixth and the seventh floors. The same also remains unauthorized. The Howrah Municipal Corporation ought not to have sanctioned the sixth and the seventh floors, as the fifth floor remains unauthorized.

In view of the above, the Howrah Municipal Corporation is directed to initiate appropriate proceedings for demolition of any unauthorized construction made beyond the sanction plan. The sanction granted in respect of the sixth and the seventh floors are also bad in law and accordingly set aside. Steps shall be taken by the Howrah Municipal Corporation for initiating proceedings at the earliest, but positively within a period of twelve weeks from the date of communication of a copy of this order, strictly maintaining the provisions of law.

WPA 87 of 2020

The petitioners have prayed for a direction for making the construction on the basis of the plan

sanctioned by the Howrah Municipal Corporation in the premises No. 7, Hardutt Rai Chamaria Road, Howrah-711101.

In view of the order passed in WPA 651 of 2020 the prayers made in the instant writ petition fails.

WPA 651 of 2020 and WPA 87 of 2020 along with all connected applications stand disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties after completion of all legal formalities.

Sh **(Amrita Sinha, J.)**