

27.09.2021
Sl. No.11
srm

W.P.A. No. 788 of 2020

**Subhas Chandra Banerjee & Anr.
Vs.
The Howrah Municipal Corporation & Ors.**

Mr. Kallol Basu,
Mr. Debjit Mukherjee,
Ms. Susmita Chatterjee,
Mr. D. Ganguly,
Mr. Shamik Sarkar,
Mr. K. Bhattacharya

...for the Petitioners.

Mr. Tanmoy Mukherjee,
Mr. Souvik Das,
Mr. K.R. Ahmed,
Mr. Rudranil Das

..for the Respondent No.9.

Mr. Sandipan Banerjee,
Ms. Ankit Surekha

...for the Howrah Municipal Corporation.

Supplementary affidavit filed by the petitioners is taken
on record.

The only reason why this writ petition is being
entertained by the Court is because an elderly gentleman, who
is the petitioner No.1 before this Court, had prayed before the
Howrah Municipal Corporation on the date of hearing for an
adjournment so that he may be represented by his learned
Advocate. The said prayer was not granted, instead the order

of demolition was issued by the competent authority of the Howrah Municipal Corporation.

The other contention of the learned Advocate for the petitioners is that the extent of deviation and/or unauthorised construction was not informed to the petitioners. Such allegation is unfounded.

On the basis of a complaint made by the respondent No.9, alleging unauthorized construction, the Howrah Municipal Corporation did not take steps. Such inaction resulted in filing of a writ petition by the respondent No.9. A co-ordinate Bench of this Court by an order dated October 11, 2018 directed the Howrah Municipal Corporation to file a report upon an inspection of the premises in question. By then, the Howrah Municipal Corporation had issued a stop work notice. His Lordship directed that the corporation must file a report upon holding an inspection and to ensure was that the stop work notice was complied with. The police authorities were directed to provide protection to the corporation to ensure such compliance. On December 4, 2018, the corporation filed an inspection report from which the nature and extent of deviation was apparent. The co-ordinate Bench observed that as the corporation had, *prima facie*, found deviations from the sanction plan and/or unauthorised construction, the matter should be reached to its logical conclusion upon invocation of

the provisions of Section 177 of the Howrah Municipal Corporation Act, 1980. His Lordship was further of the view that the nature and extent of the unauthorised construction was kept open to be decided in the proceeding. It was further observed that an opportunity of hearing should be given to the petitioners.

Today, the petitioners have moved this writ petition being aggrieved by an order passed by the Howrah Municipal Corporation directing demolition of all the unauthorised structures. The petitioners submit that on the date of hearing, the learned Advocate for the petitioners was not available and as such, appropriate submissions could not be made. Instead of allowing the adjournment, the Howrah Municipal Corporation concluded the hearing. The next contention is that the order does not specify the nature and extent of deviations and/or unauthorised construction.

The decision in the matter of Laddu Gopal Bajoria & Anr. Vs. Kolkata Municipal Corporation & Ors. Reported in (2006) 4 CHN 136, does not persuade this Court to hold that the order is bad in law, as details of deviation have not been mentioned. The initiation of the proceeding was by the respondent No.9 before this Court. The nature and extent of deviation was produced before this Court by the Howrah Municipal Corporation in the form of a report on that basis of

an inspection. The Court directed that the proceedings should be concluded and the extent and nature of unauthorised construction would be decided by the authority. The interpretation of this observation, as given by Mr. Basu, does not impress the Court. When His Lordship left it open to the authorities to decide the extent and nature of unauthorised construction, it would mean that the Court did not venture into identifying the nature and extent of unauthorised construction as the Court did not have wherewithal to do so. The experts in this regard are the competent authorities of the corporation, who inspect and measure the construction by comparing the same with the sanction plan and on the basis of the observation, deviations are detected. His Lordship directed the Corporation to initiate demolition proceedings. There is no further scope to reopen the issue as to whether there are any deviations and what was the nature and extent of deviation.

Mr. Surekha, learned Advocate appearing on behalf of the Howrah Municipal Corporation, and Mr. Mukherjee, learned Advocate appearing on behalf of the respondent No.9, submit that the petitioners have filed this writ petition on false and frivolous grounds. That the authorities had heard the matter and there was an admission of unauthorized construction. The authority did not allow any adjournment only on the ground that the time limit fixed by the Court

would expire. Mr. Mukherjee further submits that the question of deviation is apparent from the application filed by the petitioners before the authorities praying for regularisation of the deviations as per the 'as made plan' and he further submits that the said application was not entertained by the Howrah Municipal Corporation.

The report filed before this Court which is a matter of record contains the nature and extent of deviation and the same was supposed to be taken into consideration as a notice or information to the petitioners about the nature and extent of unauthorised construction.

It was for the petitioners to prove the contrary before the authority at the hearing that the said measurements were incorrect and there were no authorised constructions. Moreover, there also appears to be an admission before the authorities. However, as the authorities did not allow an adjournment, only for the limited purpose to enable the learned Advocate to represent the petitioners to appear and make submissions before the authorities concerned, the order dated January 24, 2019 is set aside and quashed.

A fresh hearing will be given to the petitioners and respondent No.9, who will be represented by their learned Advocates before the competent authority on October 7, 2021 at 11.00 a.m. The parties will make all necessary submissions

in support of their contentions and upon hearing the parties and their learned Advocates a reasoned order will be passed. If the hearing is not concluded on October 7, 2021, the same shall mandatorily be concluded on October 8, 2021. The reasoned order dealing with the contentions of the parties shall be passed and communicated to the parties within three week thereafter. The authorities shall be free to take steps in accordance with law on the basis of the order. The report filed before this Court shall be treated as the notice mentioning the extent and nature of unauthorised construction.

This writ petition is, thus, disposed of.

There will be no order as to costs.

All parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)