

Court No. 24

29.06.2021

(Item No. 5)

(AB)

**W.P.A 5595 of 2021
(Via Video Conference)**

Ram Babu Show

vs

The Howrah Municipal Corporation & Ors.

Mr. Haradhan Banerjee

Mr. Partha Pratim Mukhopadhyay

..... for the petitioner

Mr. Sandipan Banerjee

Mr. Ankit Sureka

..... For the Howrah Municipal Corpn.

Mr. Mahendra Prasad Gupta

Mr. Gopal Chandra Das

Mr. Ayan Mitra

.... For the private respondent

The petitioner's case is that he is the owner and occupier of the Municipal holding No. 14, P.M. Basti 1st Bye Lane, P.S. Shibpur, Howrah. He also claims to be a Thika Tenant of the property at 103/1, Atindra Mukherjee Lane, P.S. Sibpur, District Howrah.

The petitioner prays for a direction upon the Howrah Municipal Corporation for cancellation of the building plan sanctioned in favour of the private respondent one Sofi Mohammad in respect of the premises No. 103/1, Atindra Mukherjee Lane, Shibpur, Howrah.

According to the petitioner, the plan was obtained upon suppression and mis-representation of material facts.

The petitioner made a representation before the Howrah Municipal Corporation on 12th February,

2021 praying for cancellation of the sanctioned plan. As no step was taken by the Howrah Municipal Corporation to act in response of the complaint filed by the petitioner, he approached this Court by filing the instant writ petition.

The learned advocate representing the private respondent submits, upon instruction, that his client is the owner of the premises No. 103/1, Atindra Mukherjee Lane, P.S. Shibpur, Howrah. The predecessor in interest of the petitioner filed a Title Suit for declaration and permanent injunction against the predecessor in interest of the private respondent being Title Suit No. 288 of 1984. The said Suit was dismissed for default by an order dated 24.03.1986. The said order attained finality. A further Title Suit being T.S. No. 894 of 2020 was filed by the petitioner against the private respondent with a prayer for interim injunction. The prayer of the petitioner stood refused by the learned Court vide order dated 12th October, 2020.

It has been submitted that the petitioner does not have any right, title and interest in respect of the premises No. 103/1, Atindra Mukherjee Lane and accordingly he does not have any right to challenge the sanction of plan in respect of the said property.

The learned advocate for the private respondent prays for dismissal of the writ petition with explanatory cost.

The learned advocate representing the Howrah Municipal Corporation submits that the plan was sanctioned on the basis of the documents supplied by the private respondent.

From the submissions made on behalf of the parties the Court is not satisfied that the petitioner has any legal right to challenge sanction of building plan in respect of the premises No. 103/1, Atindra Mukherjee Lane, P.S. Shibpur, District Howrah. The petitioner has averred that he is a thika tenant in the said property. The alleged suppression of facts as claimed by the petitioner for cancellation of the sanctioned plan is also not very clear from the averments made in the writ petition.

On the contrary it appears that the petitioner has suppressed relevant facts with regard to the Title Suits filed by and between the predecessor in interest of the parties and also by the parties themselves. The said facts are highly important and necessary for the purpose of taking a decision by the Howrah Municipal Corporation as to whether the plan was sanctioned on the basis of proper facts or not. That being absent the Court is not in a position to pass any order in favour of the petitioner in the instant case.

The writ petition is devoid of merit and is hereby dismissed.

Affidavit of service filed in Court today is taken on record.

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

(Amrita Sinha, J.)