

1.
11-11-2021
debajyoti

FMA 969 of 2021
with
IA No.CAN/1/2021

Goutam Samanta & Ors.
Vs.
Howrah Municipal Corporation & Ors.

Mr. Haradhan Banerjee,
Mr. Amitava Pain,
Mr. Subhrangshu Datta,
Mr. Partha Pratim Mukhopadhyay
... For the Appellants.

Mr. Sandipan Banerjee,
Mr. Ankit Sureka
... For the Howrah Municipal Corporation.

This appeal is preferred against an order dated July 14, 2021 whereby WPA 11024 of 2021 was disposed of by a learned Single Judge. The operative portion of the said order reads as follows:

“ Mr. S. Banerjee, learned Advocate for the Howrah Municipal Corporation submits that an inspection was made and proceedings under Section 177 of the Howrah Municipal Corporation Act has been initiated. As it is submitted by Mr. Banerjee that the Howrah Municipal Corporation has already initiated proceeding under the statute, this writ petition is disposed of with a direction upon the competent authority of the Howrah Municipal Corporation to act and proceed in accordance with law and reach the proceeding to its logical conclusion in terms of the statute. The principles of natural justice shall be complied with and the respondent nos.5 & 6 as also the petitioners shall be heard. Further, spot enquiry should be made in presence of the parties and interim measures as may be necessary to ensure that the provisions of law are upheld should be taken which may include a direction to stop the work.

The entire exercise should be completed within a period of four weeks from the date of communication of this order.

The period mentioned hereinabove is mandatory.

The Court should have zero tolerance for any unauthorized construction or illegal construction and it is for the Corporation to enforce the provisions of statute in this regard. The Court does not make any observation on the merits of the matter. ”

Mr. Haradhan Banerjee, learned Senior Counsel, appearing for the appellants submits that he does not have any grievance as such against the order passed. His grievance is refusal of an order that had been prayed for in the writ petition to the effect that the private respondents should be restrained from making construction beyond what is permitted by the sanctioned plan.

The private respondents did not appear before the learned Single Judge nor have appeared before us.

Learned advocate for the Howrah Municipal Corporation says that notice of self-demolition under Section 177(1) of the Howrah Municipal Corporation Act, 1980 ('HMC Act' for short) has been issued to the private respondents as the Corporation is satisfied that the private respondents have made illegal and unauthorized construction. An affidavit has been filed on behalf of the Corporation which shall be kept with the records.

We find from that affidavit that the first notice under Section 177(1) of the HMC Act was issued way back on 13-11-2019 granting fifteen days time to the noticee for carrying out the direction. Nothing was done by the private respondents. Then a further notice under Section

177(1) of the HMC Act was sent by the Corporation on 11-03-2020 again granting fifteen days time. That also did not yield any result. A third notice was also sent by the Corporation on 28-09-2020. That has also been in vain.

The *prima facie* impression that this Court gets from the inaction on the part of the Corporation is that its concerned officers may be in cahoots with the private respondents, as a result of which, the unauthorized constructions are still intact. Since the Corporation is satisfied that the construction in question is unauthorized and illegal, it is the statutory duty of the Corporation to ensure demolition of such illegal construction as the same is likely to pose real threat to life and property in the vicinity of such construction. The Corporation shall ensure the demolition of the unauthorized construction within six weeks from date. The Inspector-in-Charge of Shibpur Police Station is directed to render all assistance and cooperation to the Corporation officers in implementing this order. Since the notice under Section 177(1) has been issued by the Corporation after giving an opportunity of hearing to the private respondents, the same is in compliance with the principles of natural justice and hence, no further opportunity of hearing to the private respondents is necessary.

We add to the order under appeal only by directing that the private respondents are restrained from making any further construction on the premises in question and/or from creating

any third party right in respect of the construction already made.

The appeal and the application are, accordingly, disposed of.

Affidavits not having been called for, the allegations in the stay application shall be deemed not to have been admitted.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance of necessary formalities.

(Subhasis Dasgupta, J.) (Arijit Banerjee, J.)