

S/L 5
06.12.2021
Court. No. 19
GB

WPA 14404 of 2021

Saket Infra Developers Private Limited & Anr.
Vs.
The Howrah Municipal Corporation & Ors.

Mr. Supratim Laha,
Mr. F. Ghaffar,
Mr. Y.A. Salim,
Mr. Aftaab Kh.

...for the Petitioners.

Mr. Sandipan Banerjee,
Mr. Ankit Sureka.

...for the H.M.C.

Mr. Malay Kumar Das.

...for the Respondent No.6.

A copy of the report prepared by the Assistant Engineer (In Charge of Building Department), Howrah Municipal Corporation is submitted before this Court. Mr. Banerjee, learned advocate for the Howrah Municipal Corporation has not been able to submit the original as he was unable to come physically due to the water logging in his area. The copy of the report dated December 3, 2021 is taken on record.

From the report, it appears that the petitioners did not take any permission for the change of user of the 2nd to 7th floor of the premises no.11/2, Burnt Salt Gola Lane, Ward No.13, Howrah and had already started running a hotel. It further appears that the 5th and 6th floor and part of the 7th floor have been constructed unauthorizedly. Thus, the Corporation is of the opinion that no change of user can be permitted now.

Mr. Banerjee further submits that an 'as made' plan was submitted by the petitioners but the rules do not permit regularization of complete floors. Only minor deviations may be regularized on compliance of formalities.

The petitioners deny the contents of the report. It is submitted by the petitioners that the construction has been done in accordance with the sanction plan. Permission was granted to the petitioners to raise the construction up to 7th floor. The change of user was with a verbal permission from the Corporation and the same would be substantiated by the fact that the trade licence was granted by the Corporation, itself.

Considered the rival contentions of the parties. This Court cannot go into the disputed question of facts as raised by the Corporation as also the petitioners. The writ petition is disposed of granting liberty to the petitioners to apply before the Corporation for grant of permission for change of user. In the said application, the contentions of the Howrah Municipal Corporation featuring in the report, shall be dealt with by the petitioners. The petitioners shall be at liberty to appear before the Commissioner for a hearing on all points including the points of unauthorized construction. It is the specific case of the petitioners that the construction has been made exclusively in compliance with the sanction plan and there has not been any construction either in the absence of a plan or in deviation of a plan. It is further submitted that the fees for regularization of the plan has also been accepted by the Corporation.

If such application is made, the Commissioner of the Howrah Municipal Corporation shall dispose of the application for change of user in accordance with law by making an inspection and by passing a reasoned order upon hearing the petitioners. The reasoned order shall be communicated to the petitioners. Needless to mention that this order shall not be construed as an observation on the legality of the building in question or on the right of the petitioners to get an order of change of user. The Corporation shall deal with the issues raised independently. This order shall also not prevent the Corporation from acting in accordance with law, in case it is found that there are unauthorized constructions. However, the petitioner shall be permitted to be represented by a learned Advocate at the hearing and during the inspection.

The Corporation shall dispose of the said application within a period of eight weeks from the date of communication of this order. As no affidavits have been called for, the allegations are deemed to be denied.

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.)