

02.03.2022
Court No. 19
Item no.32
CP

WPA No. 456 of 2022

Pradip Jaiswal
Vs.
The Howrah Municipal Corporation & ors.

Mr. Debjit Mukherjee
Ms. Piyali Dutta
....for the petitioner.

Mr. Sandipan Banerjee
.....for the H.M.C.

The copy of the sanction plan filed in court today is kept on record.

The petitioner is aggrieved by an order dated December 16, 2021, passed by the Assistant Engineer, Howrah Municipal Corporation (hereinafter referred to as 'the corporation'), Building Department. The petitioner submits that the order cannot survive for the following reasons:

- a) No inspection of the unauthorized construction was made in presence of the persons responsible.
- b) The extent of unauthorized construction has not been delineated correctly.
- c) Proper hearing was not given to the persons responsible.
- d) The order is devoid of reasons.
- e) Had the persons responsible been given an opportunity of placing their case before

the authority, the persons responsible would have been able to substantiate that the construction was made pursuant to a plan sanctioned by the corporation.

Mr. Banerjee, learned advocate appearing on behalf of the corporation, submits that six floors have been constructed without any building plan. He submits that a further inspection or a further hearing cannot improve the case of the petitioner and, as such, relegating the matter back to the corporation would be an idle formality.

The petitioner has handed over a copy of the sanction plan before this court in order to substantiate that a three-storeyed building had been permitted at holding Nos. 178 and 180, G.T. Road, Howrah. According to the petitioner, the said holding as mentioned in the building plan is the same as Premises No. 73/1, Sree Ram Dhang Road.

Heard the learned advocates for the respective parties.

The court is of the opinion that the order impugned before this court issued vide Memo No. 2619/AE/Bldg/21-22, dated December 16, 2021 suffers from the following irregularities:

- a) Inspection in the presence of the persons responsible was not held.

- b) Report of the inspection was not supplied to the parties.
- c) The parties were not able to controvert the allegations of unauthorized constructions as no hearing was held.
- d) The order suffers from non-application of mind.

The merits of the contentions of the parties are not gone into. Undoubtedly, the corporation which is vested with the powers under the law to initiate proceedings in case of detection of unauthorized construction can also take steps for demolition of the same. However, the law does not permit an authority to perform its statutory functions in violation of the principles of natural justice. The order of the authority thus fails the test of reason. The order is arbitrary and, hence, set aside.

As there are serious allegations of unauthorized construction, the corporation shall be at liberty to initiate *de novo* proceeding in accordance with law. While doing so, the corporation shall adhere to the following procedures:

- a) An inspection of the site shall be conducted. Such inspection shall be held in the presence of all interested parties, with 48 hours advance notice to the petitioner and the complainant, if any and

all interested parties in the premises in question. The notice shall be affixed in the premises, which shall operate as a notice to all.

- b) The report of the inspection shall be prepared along with the sketch map indicating the extent of deviation, if any.
- c) Such report shall be handed over to the petitioner as also the interested parties.
- d) A hearing shall be given to the petitioner and the interested parties. The parties must also be allowed to furnish their written objection/version to the said report and adduce oral and documentary evidence in support of their contentions before the competent authority.
- e) A reasoned order shall be passed and communicated to the parties. On the basis of what transpires at the hearing and during inspection, the proceedings shall be reached to its logical conclusion in terms of the statute.

The court has not gone into the merit of the claims and counter-claims of the parties and the issues shall be decided independently.

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

The writ petition is, thus, disposed of. There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)