

10.03.2022
Sl. No.11
srm

W.P.A. No. 478 of 2022

Avishake Dhara

Versus

Howrah Municipal Corporation & Ors.

Mr. Sounak Bhattacharyya,
Mr. Sumitava Chakraborty

...for the Petitioner.

Mr. Sandipan Banerjee,
Mr. Ankit Sureka

...for the Howrah Municipal Corporation.

Ms. Soumashree Ghosh

...for the Respondent Nos.7 to 9.

Affidavit of service is taken on record.

The petitioner has challenged the inaction on the part of the Howrah Municipal Corporation in disposing of complaint lodged by the petitioner with regard to the allegations of unauthorised construction by the respondent Nos.7 to 9 on a Holding No.P-293, Beharapara, Dasnagar, Howrah under Ward No.9 of Howrah Municipal Corporation. The allegations are that the respondent Nos.7 to 9 have constructed without permission and in deviation of the building rules.

Ms. Ghosh, learned Advocate appearing on behalf of the respondent Nos.7 to 9, denies the allegation of the petitioner and submits that pursuant to the complaint of the

petitioner, the Corporation had called the said respondents for a hearing and an order had been passed directing self-demolition of the unauthorised portion.

A copy of the order dated February 1, 2022 issued by the Assistant Engineer, Office of the Borough Committee-II, Howrah Municipal Corporation has been furnished before this Court by the respondent Nos.7 to 9. The same is taken on record. From the said order, it appears that the respondent No.7 was asked to demolish the unauthorised portion, but the specifications of the nature and extent of the unauthorised portion has not been mentioned in the order.

This Court is of the opinion that even if it is assumed that the Howrah Municipal Corporation had acted on the basis of the complaints of the petitioner, the order dated February 1, 2022 does not reflect that the complaints of the petitioner were taken into consideration at all. A non-speaking order has been issued, without application of mind. The same cannot be sustained in law. The Court finds that the Corporation has not acted and proceeded in accordance with the provisions of the statute. Thus, the order, which has been passed by the Assistant Engineer dated February 1, 2022, merits no consideration. The same at best can be treated as a *prima facie* finding of some unauthorised construction, as alleged by the petitioner.

The order dated February 1, 2022 shall not be given any effect to and the entire dispute shall be decided *de novo*. While doing so, the Corporation shall adhere to the following procedures:

- (a) The competent authority of the Howrah Municipal Corporation shall cause an inspection of the premises in question in the presence of the interested parties including the petitioner and the respondent Nos.7 to 9 in order to ascertain whether there has been any unauthorised construction and also to ascertain the extent and nature of the unauthorised constriction, if any, within three weeks from date.
- (b) A copy of the inspection report shall be handed over to the respective parties.
- (c) The petitioner as also the respondent Nos.7 to 9 shall be given a hearing.
- (d) The interested persons shall be allowed to file their written versions and adduce oral and documentary evidence in support of their respective claims at the time of hearing.
- (e) A reasoned order shall be passed and communicated to all concerned.
- (f) Needless to mention, the entire proceedings, so initiated, shall be reached to its logical conclusion and the

Corporation will be at liberty to proceed in accordance with law, if any unauthorised construction is detected.

(g) If the construction is continuing, then interim measures shall be taken.

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

The order dated February 1, 2022 shall be subject to the final decision that shall be taken by the competent authority, upon adjudication of the dispute as per this order of this Court.

This Court has not gone into the merits of the claims and counterclaims of the parties and all points are left open for a decision by the Corporation.

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.)