

02.03.2022
Sl. No.9
srm

W.P.A. No. 650 of 2022
Subhasish Kundu & Ors.
Vs.
The State of West Bengal & Ors.

Mr. Debabrata Mondal,
Ms. Sreetama Neogi

...for the Petitioners.

Mr. Sandipan Banerjee,
Mr. Ankit Sureka

...for the Howrah Municipal Corporation.

Affidavit of service is taken n record.

The petitioners have challenged the decision dated December 23, 2021 issued by the Officer-in-Charge, Borough-VI, Howrah Municipal Corporation, directing the petitioners to demolish the unauthorised construction from the ground to the second floor of Premises No.3/6, Ambika Kundu Lane, Post Office-Santragachi, Police Stataion-Chatterjeehat, District-Howrah, within seven days from the receipt of the letter. The letter has been purportedly issued under Section 177 of the Howrah Municipal Corporation Act 1980.

The petitioners submit that no inspection was held. No hearing was given to the petitioners. The letter of demolition does not state the nature and extent of the unauthorised construction. According to the petitioners, the order of demolition is vague, without any basis and a non-

speaking one. The learned Advocate for the petitioners submits that the Officer-in-Charge did not have the jurisdiction to issue the order of demolition.

Mr. Banerjee, the learned Advocate appearing on behalf of the Howrah Municipal Corporation, submits that the order was issued pursuant to a direction of this Court. The Officer-in-Charge, Borough-VI was authorised to issue the said order and the petitioners have constructed a G+2 building in deviation of the sanction plan.

Undoubtedly, the law vests the Corporation with the power to demolish unauthorised constructions. However, the said power must be exercised in consonance with the principles of natural justice. The order, so issued, must be tested on the touchstone of reasons. The reasons are not available in the order. The nature and extent of unauthorised construction has not been mentioned. The order does not reflect that the authority had considered the submissions made on behalf of the petitioners and as such the order dated December 23, 2021 cannot be sustained in law.

The Court does not interfere with the merits of the order but has set aside the order on the ground of violation of principles of natural justice and also because the order is cryptic and a non-speaking one.

The order dated December 23, 2021 is set aside and quashed.

The writ petition is disposed of with a direction upon the Assistant Engineer-in-Charge, Building Department, Howrah Municipal Corporation to decide the issues afresh. Whether the entire building is unauthorised or whether a portion of the building is unauthorised or only the septic tank is unauthorised will be decided by the Corporation upon holding an inspection in the presence of the petitioners and all other interested parties. As the proceedings had been initiated on the basis of a complaint, the complainant, Smt. Rita Manna must be served with a notice of inspection. A copy of the inspection report shall be handed over to the respective parties. A hearing will be held in the presence of the parties. All 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. Thereafter a reasoned order will be passed and communicated to all concerned. The Corporation shall be entitled to take all steps in accordance with law

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

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.)