

11.02.2022
Court No. 19
Item no.14
CP

WPA 676 of 2022

Sri Jayanta Kumar Roy
Vs.
State of West Bengal & Ors.

Mr. Sanjib Seth

..for the petitioner.

Mr. Sandipan Banerjee
Mr. Ankit Sureka

....for the H.M.C.

Ms. Sipra Majumder
Ms. Sangeeta Roy

.....for the State.

Mr. Rajib Ray

....for the respondent nos. 8 & 9.

The petitioner alleges unauthorized construction on premises No. 41 and 43/2 Surendra Nath Chatterjee Lane under Ward No. 4, Howrah Municipal Corporation.

This writ petition has become infructuous as the competent authority of the Howrah Municipal Corporation (hereinafter referred to as 'the corporation'), had passed an order dated January 27, 2022. The order dated January 27, 2022 was the subject matter of challenge in WPA 2046 of 2022 which was disposed of by this court with the following observations:

“This Court finds that the authority who exercises immense power under the law

affecting rights of the citizens must do so with responsibility and caution. The order impugned suffers from various errors, which were sought to be rectified by a subsequent notice. The court does not go into the merit of the contents of the order. However, the Court is of the opinion that before passing an order of demolition certain procedures have to be followed.

Under such circumstances, without commenting on the findings of the authority, the Court disposes of the writ petition upon setting aside the orders dated January 27, 2022 and January 28, 2022 thereby relegating the matter to the competent authority of the Howrah Municipal Corporation to decide the entire issue in accordance with law.

While disposing of the issues involved, the Corporation shall adhere to the following procedure:-

a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioner and the complainant, if any, within three weeks. Advance notice of the inspection shall be served upon the petitioner and other interested parties or the complainant, if any. If the parties are not available to accept notice, the authorities shall affix the notice of hearing and inspection at conspicuous places in their respective premises.

b) In case, it is found on preliminary inspection that there may be reasons to believe that the construction was without permission and was continuing, the authorities may take such interim measures by stopping such construction.

c) The report of such inspection shall be prepared along with the sketch map, indicating the extent and nature of unauthorized construction, if any.

d) Such report shall be handed over to the parties.

e) A hearing shall be given to the petitioner and the complainant, if any. 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.

f) 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 merits of the claims and the issues involved shall be decided independently.

g) The question of title, encroachment etc. shall not be gone into by the Howrah Municipal Corporation.

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

Accordingly, the writ petition is disposed of.”

Under such circumstances, the prayer in this writ petition does not survive. The petitioner has prayed that the authority be directed to initiate proceedings for demolition. In this case, the proceedings had already been initiated and an order was passed. The order has been set aside and the matter has been relegated to the authority for a fresh adjudication upon hearing the petitioner as also the respondent nos. 8 and 9.

Under such circumstances, nothing further remains to be decided. The corporation shall ensure that during the pendency of the demolition proceedings no unauthorized construction takes place.

Accordingly, 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.)