

07.04.2022
Sl. No.6
srm

W.P.A. No. 530 of 2020

Subhendu Datta

Versus

Howrah Municipal Corporation & Ors.

Mr. Suhrid Sur

...for the Petitioner.

Mr. Saptangsu Basu,

Mr. Rajesh Upadhyaya

...for the Respondent No.7.

Mr. Sandipan Banerjee,

Mr. Ankit Sureka

...for the Howrah Municipal Corporation.

The petitioner claims to be a neighbour and residing at a premises adjacent to Premises No.141, Sri Ram Dhang Road, Salkia, Howrah within the jurisdiction of the Howrah Municipal Corporation. The petitioner alleges that a G+3 storeyed building has been erected on the said premises, without any sanction and in violation of the building rules. It is submitted that the said building has been constructed over a 5-6 ft. municipal lane, which was not permitted under the building rules.

Mr. Basu, learned Senior Advocate appearing on behalf of the developer/respondent No.7, submits that the building was constructed as per the sanction granted by the Howrah Municipal Corporation. It is further submitted that

the said premises had been sold to third parties and the developer had no further interest in the said building.

It is also submitted that the original owner, namely the respondent No.6 expired long ago.

As the Court does not intend to detain the writ petition for further hearing, this Court need not pass any order for substitution of the respondent No.6. The directions are being passed on the Howrah Municipal Corporation.

Mr. Sandipan Banerjee, learned Advocate appearing on behalf of the Howrah Municipal Corporation, submits that the sanction was granted to the respondent No.7, but the authorities have not made any investigation to ascertain whether such construction had been made in accordance with the plan or not.

As there are allegations with regard to the unauthorised construction, this Court is of the opinion that the writ petition must be disposed of with a direction upon the competent authority of the Howrah Municipal Corporation to act and proceed in accordance with law and reach the complaint to its logical conclusion. While doing so, the competent authority of Howrah Municipal 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 petitioner, the respondent No.7 (person responsible) and all other interested parties including the heirs and legal representatives of the respondent No.6. Advance notice of the inspection shall be served upon the interested parties.

- (b) In case, it is found on preliminary inspection that there may be reasons to believe that the construction was without permission and is continuing, the authorities may take interim measures by stopping such construction.
- (c) A report of such inspection shall be prepared along with the sketch map indicating the extent and nature of unauthorised construction, if any.
- (d) Such report, if prepared, shall be handed over to the parties.
- (e) A hearing shall be given to the petitioner and the respondent No.7 (person responsible) and the heirs and legal representatives of the respondent No.6 and all other interested parties. The parties must also be allowed to file their written objections/version to the said report and adduce oral and documentary evidence in support of their contentions before the competent authority. All points raised by the parties shall be decided. All

documents filed by the parties, if any, shall be exchanged.

(f) A reasoned order shall be passed and communicated to all concerned.

(g) Needless to mention, the entire proceedings 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.

(h) As the identities of the heirs and legal representatives of the respondent No.6 is not before the Court, the Corporation shall affix the copy of the order along with the copy of the respective notices of the hearing at a conspicuous place on the premises in question.

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

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