

8.2.2022
Court No. 19
Item no.18
sn

WPA 1480 of 2022

Prasanta Mondal & Anr.
Vs.
The State of West Bengal & ors.

Mr. Sudipto Maitra..Sr.Adv.
Mr.Vijay Verma
Mr. Daipan Biswasfor the petitioners

Ms. Sanghamitra Nandy
Mr. Parikshit Goswami ..for the State

Mr. Sandipan Banerjee
Mr. Ankit Sureka ..for the HMC

Affidavit of service is taken on record.

The writ petitioners have made a third attempt to protect an unauthorised construction. Admittedly two additional floors have been constructed at holding No. 14/2, Khagendra Nath Ganguly Lane, P.S. Golabari, District Howrah, without a sanction plan.

Pursuant to an order of a learned co-ordinate Bench of this Court, on the complaints of same persons in the locality, the demolition proceedings had been initiated. As the Corporation had delayed to initiate a proceeding as per direction of this court, a contempt application had been taken out against the Commissioner, which is pending. The competent authority of the Corporation is facing the contempt.

Subsequently, an order of demolition was passed, which was challenged before this Court. Two fold submissions were made on behalf of the petitioners. First, that the order of demolition was passed without hearing the petitioners and the minor deviations should be considered and regularised as per the 'as made plan' before the demolition order is passed.

This Court by an order dated July 13, 2021 directed the Commissioner of the Howrah Municipal Corporation to consider the prayer for regularisation of minor deviation/minor unauthorised construction in accordance with law and as per the discretion of the Commissioner, upon taking into account cases of similarly situated persons.

Although there is no regulation in place, such order was passed as the Howrah Municipal Corporation Act, provided for such regularization of minor deviations.

Mr. Maitra, learned senior advocate appearing on behalf of the petitioners submits that the said order was violated and another demolition order was passed.

This Court set aside the second order of demolition on the ground that a hearing as directed by this Court was not given to the petitioner. This Court was of the opinion that an order which had

visited the petitioners with civil consequence could not be passed, without observing the principles of natural justice. This Court refrained from commenting on the merits of the demolition order. Once again, the matter was relegated to the appropriate authority of the Howrah Municipal Corporation to dispose of the issues involved in terms of the order dated July 13, 2021.

Pursuant to the order dated January 19, 2022, an order of demolition has been passed by the Assistant Engineer, Building Department, dated January 21, 2022, who is the delegatee of the Commissioner.

This order is impugned in this writ petition. It appears from the order that two additional floors over and above the sanctioned floors have been constructed and those could not be treated as minor deviation.

Unfortunately, it appears that the said order is a verbatim representation of the order passed earlier by the authority and the submissions of the petitioners have not been recorded. This Court had directed that the appropriate authority should consider the cases of other similarly situated persons and also the convention followed with regard to regularisation of minor deviations by the

Corporation. This exercise has not been done by the authority.

Mr. Banerjee, learned advocate for the Howrah Municipal Corporation fairly submits that the Corporation has failed to take into account those aspects and the competent authority would reconsider the issue in the light of the earlier order of this court.

The Court had always directed the Corporation to apply its mind and exercise discretion at the time of considering the prayer for regularisation of minor deviations while disposing of the demolition proceeding. The order of this Court should not be construed as an opinion that the additional floors could be treated as minor deviations. It is only for the competent authority to decide with reasons, all the issues including that of regularization. The law has been laid down by the Hon'ble Apex Court as also this Court that unauthorised constructions should not be permitted to continue.

However, as the order impugned is not a speaking one and does not disclose that the submissions of the petitioners had been dealt with and also because the cases cited by the petitioners before the authority in the representation dated January 21, 2022 with regard to regularization of other premises had not been taken into consideration

and distinguished, the order impugned deserves to be set aside. The same is cryptic and devoid of reasons.

The petitioners have annexed a notification of the Corporation, on the basis of which regularization is done in some cases.

Under such circumstances, this writ petition is disposed of by setting aside the order dated January 21, 2022 with a direction upon the competent authority of the Howrah Municipal Corporation to dispose of the representation of the petitioner dated January 21, 2022 upon recording the submissions of the petitioners and by dealing with such submissions and documents with reasons. If the petitioners do not stand in the same footing as the constructions pointed out in the representation, then reasons shall be disclosed.

The failure of the authority to conclude the proceeding by passing a well reasoned and well considered order, is actually enuring to the benefit of the petitioner, which is not appreciated by the court.

A reasoned order shall be passed and communicated to all concerned. The entire exercise shall be completed within a month from date, upon hearing all the parties.

The Court does not express any opinion with regard to the merits. This order shall not be

construed either as a direction to regularize or an opinion on the eligibility for regularization. The court is also of the view that equality cannot operate in the negative.

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.)