

S/L 15
09.02.2022
Court. No. 19
GB

W.P.A. 2046 of 2022

Suresh Roy
VS
The Howrah Municipal Corporation & Ors.

*Mr. Kollol Basu,
Mr. Rajib Ray.*

...for the Petitioner.

*Mr. Sandipan Banerjee,
Mr. Ankit Sureka.*

...for the H.M.C.

Affidavit-of-service filed in Court today be kept with the record.

The petitioner claims to be the person responsible for the construction on Premises No.41 and 43/2, Surendra Nath Chatterjee Lane under Ward No.4 of Howrah Municipal Corporation. An order of demolition dated January 27, 2022 was issued by the Assistant Engineer-in-Charge, Building Department, Howrah Municipal Corporation.

The challenges are as follows:

- a) The identification of the premises in respect of which the allegation of unauthorized construction has been made, was erroneous;
- b) The extent of deviation was not mentioned;
- c) Reasons have not been assigned;
- d) Proper hearing was not given; and
- e) By a subsequent order dated January 28, 2022 the factual errors in the demolition order, was corrected without further notice to the petitioner.

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.

There will be however no order as to costs.

All parties are directed to act on the basis of server copy of this order and the learned advocate's communication.

(Shampa Sarkar, J.)