

21.02.2022  
Court. No. 19  
Item no. 13  
Cp

WPA 2107 of 2022

Chandan Majumdar & anr.  
Vs.  
The Howrah Municipal Corporation & Ors.

Mr. Abhratosh Mazumdar, Sr. Advocate  
Mr. Sayan Sinha  
Mr. Mainak Swarnokar  
... for the Petitioners.

Mr. Sandipan Banerjee  
Mr. Ankit Sureka  
... for the H.M.C.

Mr. Lalitmohan Mahata, Sr. Govt. Advocate  
Mr. Supratim Dhar

.....for the State.

The only contention of the writ petitioners before this court is that the Howrah Municipal Corporation (hereinafter referred to as 'the corporation'), passed an order of demolition dated January 10, 2022 without granting an opportunity of hearing to the petitioners. The petitioners claim to be persons connected with such construction and it is alleged that an order passed in violation of the principles of natural justice, must be set aside.

It is contended by Mr. Mazumdar, learned senior advocate appearing on behalf of the petitioners, that the notice of hearing was not received by the petitioners. The petitioners were totally unaware that

the corporation had fixed the date of hearing on January 3, 2022. It is further contended that the authority ought to have given one additional chance to the petitioners as per the provisions of law, before passing the order impugned on the first date of hearing.

Mr. Banerjee, learned advocate appearing on behalf of the corporation, submits that a notice was sent by registered post.

However, instead of going into the dispute with regard to the delivery of the notice at the address of the petitioners, this court is of the view that the hearing must be held, de novo. The fact that the petitioners were not present at the hearing is an admitted position. The fact that the order impugned was passed without granting another opportunity to the petitioner, is also an admitted position. Under such circumstances, without going into the correctness of the order on the merits, this court sets aside the order dated January 10, 2022 passed by the Assistant Engineer of the corporation on the ground of violation of the principles of natural justice and also on the further ground that a co-ordinate bench of this court had specifically directed the Commissioner to dispose of the matter, but instead, the order was passed by the respondent No.5.

Under such circumstances, the writ petition is disposed of with a direction upon the respondent no. 2 to dispose of the entire issue as per the direction of this court in WPA No. 9480 of 2020. Although the Assistant Engineer (Building) is a delegatee of the Municipal Commissioner and the law empowers such delegatee to hear out the matters but, as there is a specific direction upon the respondent no. 2, any order directing the delegatee to hear the matter, would amount to modifying the order of Her Lordship. As such, the entire issue must be heard by the Commissioner himself.

Needless to mention that the Commissioner shall follow the procedure, laid down hereinbelow:

- a) An inspection of the site shall be conducted.  
Such inspection shall be held in the presence of the parties, with 48 hours advance notice to the petitioner and the respondents 10 and 11.
- b) The report of the inspection shall be prepared along with the sketch map indicating the extent of deviation, if any.
- c) Such report shall be handed over to the petitioner as also the respondents 10 and 11.
- d) A hearing shall be given to the petitioner and the respondents 10 and 11. 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.

- e) 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 counter-claims of the parties and the issues shall be decided independently.

If any revised plan or application have been filed by the petitioners, the same shall be disposed of simultaneously, strictly in accordance with law.

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.)**