

S/L 5
23.02.2022
Court. No. 19
GB

W.P.A. 2443 of 2022

Sri Sandip Ghosh
VS
Howrah Municipal Corporation & Ors.

*Mr. Aniruddha Chatterjee,
Mr. Tanmoy Mukherjee,
Mr. Sounak Bhattacharyya,
Mr. Riju Ghosh,
Mr. Sumitava Chakraborty.*

...for the Petitioner.

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

...for the H.M.C.

*Mr. Dyutiman Banerjee,
Mr. Satyam Mukherjee,
Mr. Soumyadeep Mukherjee.*

...for the Respondent No.7.

*Mr. Biswajib Ghosh,
Mr. Bijoy Bag.*

...for the Respondent Nos.8 to 10.

The petitioner is aggrieved by an order of demolition dated February 7, 2022 passed by the Assistant Engineer, Howrah Municipal Corporation. The said proceeding was initiated by the authority on the basis of a complaint lodged by one Indranil Bhattacharjee, the respondent no.7.

WPA 10312 of 2021 was filed by the respondent no.7 alleging inaction on the part of the Corporation. The said writ petition was disposed of by an order dated November 9, 2021 by this Court, directing the competent authority of the Howrah Municipal Corporation to decide the issue of unauthorized construction in accordance with law. Consequent upon such order, the order impugned has been

passed. The allegations are that the Assistant Engineer, Howrah Municipal Corporation was not authorized to hear out the demolition case and that the petitioner which is a partnership firm, should have been served with the relevant notices prior to the disposal of the demolition case. Reliance has been placed on Section 231(1)(b) of the Howrah Municipal Corporation Act, 1980 to demonstrate how a notice must be served upon a partnership firm.

The next contention is that the representative of the partnership firm could not be present at the time of inspection and the basis of the demolition order were the findings at the said inspection. It has been urged that the inspection was held in violation of the principles of natural justice. Any report based on such inspection would be vitiated. The other contention is that the notices of hearing were not received at the proper time and as such, neither the petitioner nor the other partners of the partnership firm could attend the hearing.

Although the Court finds that there are findings on facts and an additional floor has been constructed without any sanction plan, this Court is of the opinion that the persons responsible for such construction, namely, the partnership firm and its partners should have been given an opportunity to be present at the inspection and also at the hearing. The Court also finds that in the order impugned, that the authority has not considered the aspect of non-availability of the petitioner at the inspection or at the hearing.

In view of the above situation, this Court is of the opinion that an authority higher to the Assistant Engineer, Howrah Municipal Corporation must decide the issue. As such, the entire issue shall be decided by the Commissioner, Howrah Municipal Corporation by adhering the following procedure:-

a) An inspection shall be conducted by the officials of the engineering department. Such inspection shall be held in the presence of the petitioner, the respondent nos.7 to 10 and other interested parties, on March 7, 2022 at 12 noon at Premises No.244/1 Sarat Chatterjee Road, Howrah-711102. All the partners of the partnership firm are present before this Court and they shall be at liberty to be present at the inspection personally or through their representatives. No further notice of inspection shall be given. The order of this Court shall be considered as sufficient notice. 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 as are available under the law.

c) Such report shall be handed over to the petitioner and other partners as also the respondent nos.7 to 10.

e) A hearing shall be given to the petitioner and the respondent nos.7 to 10 and all other interested parties. The parties must also be allowed to furnish their written 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 allegations and the issues involved shall be decided independently.

The entire exercise shall be completed within a period of one month from the date of inspection.

Only on the ground of non-compliance of the principles of natural justice, the order impugned dated February 7, 2022 is set aside.

The Court is of the opinion that the concerned authority ought to have given one more opportunity to the persons responsible to attend the inspection and the hearing, instead of disposing of the proceeding in their absence. The prayer restraining the petitioner/firm from creating third party interest is rejected. If the developers create third party interest in respect of the additional floors, the same shall be done at their own risk and neither the Howrah Municipal Corporation nor the complainants have any responsibility towards the protection or rehabilitation of such persons. If

any person is aggrieved by the action to be taken pursuant to the order of this Court in case unauthorized constructions are detected, the remedy of those persons shall be against the developer/vendor and not the Corporation.

In the matter of ***Supertech Ltd. v. Emerald Court Owner Resident Welfare Assn.***, reported in ***(2021) 10 SCC 1***, the Hon'ble Apex Court held as follows:-

“172.6. The appellant shall within a period of two months refund to all existing flat purchasers in Apex and Ceyane (T-16 and T-17), other than those to whom refunds have already been made, all the amounts invested for the allotted flats together with interest at the rate of twelve per cent per annum payable with effect from the date of the respective deposits until the date of refund in terms of Part H of this judgment.

172.7. The appellant shall pay to the RWA costs quantified at Rs 2 crores, to be paid in one month from the receipt of this judgment.”

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/or the learned advocate's communication.

(Shampa Sarkar, J.)