

S/L 20
11.05.2022
Court. No. 19
Cp

W.P.A. No. 2990 of 2022

Smt. Indrani Panja
VS
The Howrah Municipal Corporation & Ors.

Mr. Ayan Banerjee
Ms. Debjani Sengupta
... for the Petitioner.

Mr. Sandipan Banerjee,
Mr. Ankit Sureka
Mr. S. Majumder
... for the H.M.C.

Mr. Amitava Paine
Mr. Subhrangshu Datta
...for the respondent nos. 5 and 6.

The petitioner has alleged that the respondent nos. 5 and 6 have started some unauthorized construction on Holding No.49/1, Mahesh Paul Lane, P.S. Chatterjeehat Old Shibpur, District-Howrah, Pin – 71110-4, under the Howrah Municipal Corporation. It is the contention of the petitioner that despite complaints lodged by the petitioner, the Howrah Municipal Corporation has not taken any steps to stop such illegal and unauthorized construction. It is submitted by the petitioner that the constructions have been raised without maintaining the minimum open space as per the rules and the construction deviates from the sanctioned building plan.

Mr. Ayan Banerjee, learned advocate appearing on behalf of the petitioner, prays for an injunction on the said construction.

As this court finds, prima facie, that there are additional floors beyond the sanction plan, the matter is being relegated to the authorities by this Court without any observations on the merits of the claims of the petitioner. The authority has already issued a notice of hearing, upon receipt of the complaint. The Municipal Commissioner shall dispose of the proceeding according to law and upon compliance of the principles of natural justice.

The complaint of the petitioner dated January 20, 2022, which is Annexure-P/2 at Page-12 of the writ petition, shall be disposed of by the Municipal Commissioner of the Howrah Municipal Corporation in the manner prescribed below:-

- a) Inspection of the construction shall be conducted by an authorized engineer of the building department of the corporation in the presence of the parties, with 48 hours advance notice to the parties. If the parties are not available to accept notice, the same shall be affixed at a conspicuous place in the 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) Reports shall be prepared and handed over to the parties.
- d) Thereafter, a hearing shall be given by the Commissioner of the Howrah Municipal Corporation to the petitioner and the respondents Nos.5 and 6. The parties must also be allowed to furnish their written objection/version to the said reports 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 with regard to the constructions.

If any application for regularization of the unauthorized construction has also been filed by the respondent nos. 5 and 6, the same shall also be considered and disposed of in the proceeding, in accordance with law.

This order shall not be construed as an observation on the rights of the respondent nos. 5 and 6 for regularization of the unauthorized construction.

It is made clear that no further construction shall take place till the matter is determined by the authorities.

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

The question of title, possession and boundary dispute etc. shall not be decided by the corporation. The only question to be decided by the corporation would be whether the construction has been made without any permission and/or in violation of the building rules.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)