

S/L 16
10.5.2022
Court. No. 19
sn

WPA 4041 of 2021

Lisa Rani Bhuyia alias Lisa Bhuyia
Vs.
Howrah Municipal Corporation & Ors.

Mr. Prasenjit Burman
Mr. Chitrak Biswas

... for the Petitioner.

Mr. Sandipan Banerjee
Mr. Ankit Sureka
Ms. Kalpita Paul

... for the HMC

Mr. Susanta Kr. Mukherjee
Mr. Hare Krishna Halder

... for the State.

Mr. Indranil Roy
Mr. Biswajit Manna

... for the Respondent No.5

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

The petitioner alleges that the Howrah Municipal Corporation has failed and neglected to implement the self-demolition order passed in the proceedings in relation to the premises situated at L.R. Dag No. 3283 pertaining to L.R. Khatian no. 1025 of Mouza Balitikuri, Police Station Dasnagar Naskarpara under Ward No. 50 of Howrah Municipal Corporation. Prayers have been made for implementation of the same.

The petitioner lodged a complaint before the Howrah Municipal Corporation. The sub-assistant

Engineer inspected the site on July 18, 2020 and issued a stop work notice.

The respondent no.5, against whom, the allegation of unauthorised construction has been made, was asked to attend the hearing, and thereafter, the self-demolition notice was issued. The self-demolition notice was issued on November 5, 2020.

The learned advocate for the petitioner submits that the Howrah Municipal Corporation is duty bound to implement the order of demolition as the respondent no. 5 has failed to comply with the order of self-demolition.

Mr. Banerjee, learned advocate for the Howrah Municipal Corporation filed a report, which states that an inspection was held on July 18, 2020 and upon hearing the husband of the respondent no.5, the self-demolition notice was issued.

Mr. Roy, learned advocate for the respondent no.5 submits that the respondent no.5 purchased the property from the petitioner with the existing structure. The sale deed has been produced before this Court. According to Mr. Roy, certain repairing work was done to the existing structure. He next submits that the writ petition has been filed to pre-empt the respondent no.5 from enforcing the agreement for sale entered into between the parties. Mr. Roy also produces all documents, which have been relied upon

in the proceeding. Such facts have not been considered by the Corporation in the demolition order.

Having considered the order of demolition, it appears that the Assistant Engineer, Borough VII, Howrah Municipal Corporation directed the respondent no.5 to demolish the unauthorised structures. The order does not indicate as to whether any inspection report was prepared. The nature and extent of unauthorised structure is not available from the order. Although, Mr. Banerjee submits that the entire structure is unauthorised, such fact is not available from the order impugned. This Court is of the view that an order of self-demotion which is vague and lacking in material particulars, cannot be implemented..

Mr. Banerjee files a report which is taken on record.

Under such circumstances, the order dated November 5, 2020 shall be treated as a preliminary finding of the alleged unauthorised construction, but the direction for demolition is set aside as the same is not executable.

In the meantime, the Corporation shall hold an inspection of the premises, in the presence of the petitioner as also the respondent no.5 or her authorised representative upon notice to both the

sides and reach the complaint filed by the petitioner to its logical conclusion in accordance with law.

While doing so, the Howrah Municipal Corporation shall adhere to the following procedure:-

a) An inspection of the premises shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent no.5 and all other interested parties. Advance notice of the inspection shall be served upon the petitioner and the respondent no.5. If the parties are not available to accept notice, the authorities shall affix the notices 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 respondent no.5. 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. All documents relied upon by the respective parties shall be exchanged.

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 question of title, boundary dispute etc., shall not be decided by the municipality.

The court has not gone into the merits of the claims and counter-claims of the parties and the issues involved shall be decided independently.

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.

However, there will be no order as to costs.

All the parties are directed to act on the basis of the learned advocate's communication.

(Shampa Sarkar, J.)