

Sl. No.96
(Monthly List)
05.07.2022
Court No.24
B.M.

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 4088 of 2021

Debasis Pain & Anr.
v.
State of West Bengal & Ors.

Mr. Amritam Mandal
Mr. Aditya Mondal
Ms. Ananya Chakraborty
... for the petitioners
Mr. Sandipan Banerjee
Mr. Ankit Sureka
Mr. Sobhan Majumder
... for the Howrah Municipal Corporation
Mr. Nilanjan Bhattacharjee
Mr. Abhilash Chatterjee
... for the private respondent
Ms. Sipra Majumdar
Mr. Prativa Ghatak
... for the State

The petitioners allege unauthorised construction by the private respondent without maintaining the statutory open spaces.

In the earlier writ petition filed by the petitioners, an order was passed by the Court on 9th September, 2020 in WPA 6617 of 2020, CAN 1 of 2020 (Old No. CAN 5435 of 2020) wherein the Court directed the Howrah Municipal Corporation to dispose of the proceeding initiated by the Corporation under Section 177 of the Howrah Municipal Corporation Act, 1980. The Court

directed an inspection to be conducted in the presence of all the parties.

The petitioners have annexed documents to show that the inspection was duly conducted after giving opportunity of hearing to all the parties and inspection report has been prepared on the site on 28th September, 2020 and an order has been passed by the Commissioner of Howrah Municipal Corporation on 19th December, 2020.

The inspection report mentions that no encroachment on the common passage (West side) is found. Side deviations have been found. After the inspection a hearing was conducted.

Upon perusal of the statements and upon consideration of the findings of the inspection no encroachment over the common passage between the premises of the petitioners and the premises of the respondent no.8 has been found. The Corporation opined that some deviation in all the sides has crept in during the construction of the building.

The Howrah Municipal Corporation initiated proceeding under Section 177(1) of the Howrah Municipal Corporation Act, 1980 and order was passed to remove such deviation strictly under the control and supervision of Class-I enlisted Structural Engineer. The Commissioner recorded that no unauthorised

construction has been carried out after the order was passed by the Hon'ble Court.

The petitioners submit that as the inspection report mentions that there is no encroachment on the common passage (West Side) the men and agents of the Corporation did not take into consideration the encroachment in the Southern side of the building. The premises of the petitioners lie in the Southern side of the premises of the private respondent where the construction has been made.

On a query from the Court, it has been submitted by the learned advocate appearing on behalf of the petitioners as well as the private respondent that two premises are separated by a boundary wall. The encroachment which the petitioners are referring to is not an encroachment *per se*, by entering into the land of the petitioners. It is the deviation from the sanctioned plan by which the mandatory side open spaces have not been maintained at the time of making construction.

The Commissioner has recorded in the impugned order that there has been deviation in all the sides. The same takes care of the allegation of the petitioners that there has been deviation by not maintaining the statutory open spaces in all the sides i.e. including the Southern side.

The Commissioner has directed for removal of the deviation.

Learned advocate representing the private respondent submits that after the order was passed by the Commissioner, the private respondent has already demolished the portion where there has been deviation.

The men and agents of the Howrah Municipal Corporation are directed to conduct a fresh inspection to ascertain as to whether the direction passed by the Commissioner, Howrah Municipal Corporation directing the private respondent to remove the unauthorised construction and the deviation has been complied or not. The site inspection shall be carried out after giving prior notice to the petitioners as well as the private respondent at the earliest.

If the Corporation is of the opinion that the deviations have not been removed, necessary steps shall be taken by the Corporation for removal of the deviation in accordance with law.

The writ petition stands disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Amrita Sinha, J.)