

09.03.2022
Sl. No.5
srm

W.P.A. No. 3802 of 2022

Sanoj Sonkar

Versus

The Howrah Municipal Corporation & Ors.

Mr. Tanmoy Mukherjee,
Mr. Souvik Das,
Mr. K.R. Ahmed,
Mr. Rudranil Das

...for the Petitioner.

Mr. Sandipan Banerjee,
Mr. Ankit Sureka

...for the Howrah Municipal Corporation.

Mr. Ayan Banerjee,
Mr. Suman Banerjee

...for the Intervenor/Respondent No.5.

The writ petition has been filed with the allegation that the order of self-demolition dated August 27, 2021 issued by the Assistant Engineer, Borough-IV, Howrah Municipal Corporation, is liable to be set aside. The order is without any reasons, arbitrary and suffers from total non-application of mind.

The petitioner submits that after the order dated August 27, 2021 had been issued, but not served, the petitioner was asked to appear for a hearing before the authority for a consideration of his prayer for regularisation of the deviations. It is further submitted that a field

inspection was held by the competent authority of the Howrah Municipal Corporation before the petitioner was called for a hearing on the point of regularisation of the deviations.

Mr. Ayan Banerjee, learned Advocate, whose client was the complainant, seeks to be intervene in this proceeding.

Such prayer is allowed. The learned Advocate-on-record for the petitioner is directed to implead Sri Amal Kumar Mallick as the respondent No.5. A copy of the writ petition be served upon Mr. Ayan Banerjee.

According to Mr. Ayan Banerjee, the added respondent has also filed a writ petition being WPA No.21306 of 2021, for a direction upon the Howrah Municipal Corporation to take steps against the unauthorised constructions allegedly existing on Holding No.2/3, Amrita Lal Pyne Lane, District-Howrah.

Mr. Sandipan Banerjee, learned Advocate appearing on behalf of the Howrah Municipal Corporation, submits that there has been a long standing private dispute between the parties. According to Mr. Banerjee, the Corporation, having found some deviations in the construction, passed the order of self-demolition. However, Mr. Banerjee has not been able to satisfy the Court as to the extent and nature of

deviations. The same is also absent in the order impugned. Thus the order of self-demolition is vague and unexecutable.

This Court is of the view that an order which affects the right to property of a citizen must be a speaking order and must be passed upon hearing the parties affected. The law also provides that orders of demolition cannot be issued in violation of the principles of natural justice.

Moreover, non-speaking orders go to the very root of the defect. Such arbitrary and unreasoned orders are violative of Article 14 of the Constitution of India. Under such circumstances, the order impugned cannot be sustained in law.

The other contention of Mr. Mukherjee, learned Advocate appearing for the petitioner, that the demolition proceedings cannot be initiated as the Corporation had already called the petitioner for a meeting to consider the prayer for regularisation of the deviations, is not accepted by the court. The Corporation has been empowered by the statute to regularise some deviations. However, if such deviations are major or in violation of the rules, which affect the plan and lay out of the area in question, such deviations cannot be regularised. Calling the added respondent for a meeting would not ipso facto amount to a decision to

regularize the deviations. The same shall be decided in accordance with law.

In this case, the nature and extent of deviation will be decided by the Corporation. The order impugned is, however, set aside on the ground of violation of principles of natural justice as also on the ground of the same being a non-speaking order, which vitiates the entire order.

Under such circumstances, the writ petition is disposed of with a direction upon the Corporation to initiate *de novo* proceedings on the basis of the complaint received. The Corporation while doing so shall adhere to the following procedures:

- (a) The competent authority of the Howrah Municipal Corporation shall cause an inspection of the premises in question in the presence of the interested parties including the petitioner and the respondent No.5 in order to ascertain whether there has been any unauthorised construction and also to ascertain the extent and nature of the unauthorised construction, if any, within three weeks from date.
- (b) A copy of the inspection report shall be handed over to the respective parties.
- (c) The petitioners as also the respondent No.5 shall be given a hearing.

- (d) The interested persons shall be allowed to file their written versions and adduce oral and documentary evidence in support of their respective claims at the time of hearing.
- (e) A reasoned order shall be passed and communicated to all concerned.
- (f) Needless to mention, the entire proceedings, so initiated, shall be reached to its logical conclusion and the Corporation will be at liberty to proceed in accordance with law, if any unauthorised construction is detected.
- (g) If the construction is continuing, then interim measures shall be taken.

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

The Court does not express any view on the point of regularisation in view of the fact that, as yet, there is nothing before the Court to decide on the nature and extent of the deviation that may be found and also whether the same could be regularised. However, the Court makes it clear that if violation of the building rules are found with regard to the allegation of Mr. Ayan Banerjee, that the mandatory side spaces have not been kept, the Corporation shall ensure that

the rules are not violated and the mandatory side spaces which are required to be left open must be maintained.

This Court has not gone into the merits of the claims and counterclaims of the parties and all points are left open for a decision by the Corporation.

This writ petition is, thus, disposed of.

There will be no order as to costs.

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

(Shampa Sarkar, J.)