

28.03.2022

Sl. No. 44

ss

W.P.A. 3982 of 2022

Sona Karar & anr.

Vs.

The Howrah Municipal Corporation & ors.

Mr. Abhratosh Majumdar

Mr. Sayan Sinha

Mr. Steven S. Biswas ... for the petitioners

Mr. Sandipan Banerjee

Mr. Ankit Sureka ... for the H.M.C.

Mr. Asish Kumar Guha

Mr. Naren Ghosh Dostidar ... for the State

The writ petition has been filed challenging the self-demolition order dated January 20, 2022 issued by the Assistant Engineer, Howrah Municipal Corporation.

The grounds of challenge are as follows :-

- a) The extent of deviation from the sanction plan had not been pointed out in the order;
- b) The nature and character of the unauthorized construction, was not reflected in the order;
- c) The authority had wrongfully recorded that the petitioners had admitted that the construction was unauthorized;
- d) The order was cryptic, without reasons and passed without considering the submissions made on behalf of the petitioners.

The petitioners have produced a sanction plan granted by the Howrah Municipal Corporation for construction of a G+3 storeyed building. A supplementary affidavit has been filed inter alia,

containing a revised plan which had been filed with the Corporation, for construction of the 4th and 5th floors. It is submitted that the petitioners have not yet started construction of the 4th and 5th floors, in view of the pendency of the revised plan.

The petitioners upon receiving the order, objected to the finding that the deviation was admitted. The said representation has not yet been considered by the Corporation.

Mr. Banerjee, learned Advocate appearing on behalf of the Corporation submits that a proceeding was initiated *suo motu*. Upon detecting unauthorised construction, and on the basis of the admission, the order was passed.

Mr. Ghosh Dostidar, learned Advocate appearing on behalf of the State, submits a police report. Upon holding an enquiry of the construction on the premises No.18/5 and 18/6, Gadadhar Mistry Lane, Police Station Shibpur, Ward No.42, District Howrah, such report has been filed. The same is kept on record.

Having heard the learned Advocates for the respective parties, this Court is of the opinion that the order does not point out the nature, extent and details of the deviation from the sanction plan. There are no allegations of extension of floors, during the pendency of the revised plan.

Thus, in the opinion of the Court unless the order of demolition specifically indicates the nature of the deviation and the extent of unauthorised construction which is to be demolished, such order cannot be implemented. The order is also unreasoned and arbitrary.

Under such circumstances, this writ petition is disposed of upon setting aside the order dated January 20, 2022. Liberty is granted to the Corporation to act and proceed in accordance with law, *de novo*. If it is detected from the records, that the proceeding had been initiated on the basis of any complaint, then the complainant, shall also be notified of the inspection and the hearing to be held, pursuant to the order of this court. While disposing of the matter, the Corporation will adopt 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 complainant, if any, within three weeks. Advance notice of the inspection shall be served upon the petitioner and the complaint, if any.

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 complainant, if any. 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 points raised by the parties shall be decided. All documents filed by the parties, if any, 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 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.)