

11.04.2022
Court No. 19
Item no.06
CP

W.P.A. No. 4614 of 2022

Sri Manik Panja
Vs.
Howrah Municipal Corporation & ors.

Mr. Aniruddha Chatterjee
Mr. Sounak Bhattacharya
Mr. S. Chakraborty
Mr. Bijoy Bag
Mr. S. Mondal

...for the petitioner.

Mr. Sandipan Banerjee
Mr. Ankit Surekha
Mr. S. Majumder
Ms. U. Dutta

....for the H.M.C.

The petitioner prays that the demolition order passed by the Assistant Engineer dated January 27, 2022 in respect of 22 Lalit Mohan Chatterjee Sarani, be set aside on the ground of lack of jurisdiction and on the further ground that the same being unreasoned, was arbitrary.

It appears that the authority has filled in the blanks of a cyclostyled order by mentioning the floors etc, without giving the details of the deviations. It appears that some deviations from the sanction plan had been detected. The direction in the last paragraph of the order, is ambiguous and there is no clarity with regard to the finding.

Mr. Banerjee, learned advocate appearing on behalf of the Howrah Municipal Corporation, submits that the commissioner has the power under the law to delegate his function including initiation of proceedings in respect of such unauthorized construction and demolition thereof, to his subordinate officers. The Assistant Engineer has exercised his jurisdiction in terms of such delegation. He next submits, that when there are rampant constructions of extra floors, the court should not grant any protection with regard to such construction.

Having considered the rival contentions of the parties, this court finds that the Assistant Engineer has not applied his mind to the nature and extent of the unauthorized construction. No specifications have been given. No inspection had been made. The demolition proceedings were not concluded upon compliance of the principles of natural justice. In order to find out the deviations from the sanction plan an inspection in the presence of the petitioner ought to have been held, and the person responsible should have been made aware of the extent and nature of unauthorized construction.

From the findings and the directions in the penultimate paragraph of the order impugned, it also appears that there are deviations from the sanction

plan, upto the 2nd floor level and, thereafter the 4th floor onwards have been constructed without sanction.

The order does not state the extent of the deviation nor does it state how many extra floors which have been allegedly constructed beyond the 4th floors.

Having found such irregularities in the order this court is of the view that a more detailed, specific and composite order ought to have been passed upon holding an inspection of the premises in question, and upon recording the submissions of the person responsible. Thus, this court is of the view that the commissioner must deal with such issues. The order is not sustainable in view of the ambiguity, lack of reasons and arbitrariness. It is cryptic and not in consonance with the legal provisions.

The order impugned is set aside.

The commissioner of the Howrah Municipal Corporation shall decide the entire issue de novo. While doing so, the corporation shall follow the following procedure:

- a) An inspection of the premises shall be conducted by a competent engineer of the department as authorized by the municipal commissioner. Such inspection shall be held in the presence of the petitioner and

the interested parties, with 48 hours advance notice to the petitioner and the interested parties. If they are not available for service of the notice, the notice shall be affixed at a conspicuous place of the 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 the inspection shall be prepared along with the sketch map indicating the extent of deviation, if any.
- d) Such report shall be handed over to the petitioner as also the interested parties.
- e) A hearing shall be given to the petitioner and the interested parties by the municipal commissioner. 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.
- f) A reasoned order shall be passed by the municipal commissioner 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 shall be decided independently.

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

The petitioner shall not make any further constructions in view of the specific findings of unauthorized construction and shall also not create any third party interest.

The writ petition is, thus, disposed of. There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)