

S/L 7
25.03.2022
Court. No. 19
GB

WPA 4689 of 2022

Tapan Kumar Dey
VS
The Howrah Municipal Corporation & Ors.

(Through Video Conference)

Mr. Puja Beriwal.

...for the Petitioner.

*Mr. Sandipan Banerjee,
Mr. Ankit Sureka.*

...for the H.M.C.

*Mr. Himadri Sikhar Chakraborty,
Ms. Tanushree Pal.*

...for the State.

Mr. Soumya Banerjee.

...for the Respondent Nos.8 and 11.

*Mr. Debjit Mukherjee,
Ms. Susmita Chatterjee,
Mr. D. Ganguly,
Mr. K. Bhattacharya.*

...for the Respondent Nos.9 and 10.

The petitioner is the complainant, who seeks implementation of an order of demolition dated February 16, 2022 issued by the Assistant Engineer, Borough-V, Howrah Municipal Corporation.

The allegation is that the respondent nos.8 to 12 have forcefully entered into the premises no.69 and 71, Kashinath Chatterjee Lane, Howrah and have raised constructions without any permission.

According to the authorities, the construction of a masonry building in the said premises, was unauthorized.

The petitioner submits that once the authorities have detected an unauthorized construction and passed an order of demolition, the authorities must implement its own order.

Mr. Mukherjee, learned advocate appearing on behalf of the respondent nos.9 and 10 submits that the order of demolition does not disclose whether any inspection was made before the order was passed. The extent of the unauthorized construction has not been mentioned. It is further submitted that pursuant to the complaint filed by the petitioner, no proceeding was initiated. Neither any inspection nor any hearing was given to the parties.

Mr. Banerjee, learned advocate for the Corporation submits that further inspection and hearing will not improve the case of the respondent nos.8 to 12 as the said respondents have not been granted any permission to build on the aforementioned premises.

Although, the petitioner seeks implementation of the order passed by the authorities, it does not reflect from the order that the nature and extent of the unauthorized construction has been described. The order also does not reflect that the respondent nos.8 to 12 were ever heard.

The court is not inclined to go into further details of the said order of demolition, in view of the opinion of the Court that the order of demolition lacks material particulars and is thus not implementable at this stage.

Accordingly, the writ petition is disposed of with a direction upon the competent authority of the Howrah

Municipal Corporation to proceed afresh in accordance with law by adopting the following procedure:-

a) An inspection of the premises shall be conducted on March 30, 2022 at 12.30 p.m. Such inspection, shall be held in the presence of the petitioner and the respondent nos.8 to 12. The order of this Court shall be treated as a notice. No further notice is required to be given to the parties. If the parties are not available, then inspection shall be held in their absence.

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) 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 hearing will be held on April 12, 2022. The petitioner and the respondent nos.8 to 12 shall appear at the hearing. All points raised by either party, shall be decided.

g) 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.

h) The question of title, encroachment and boundary dispute etc. shall not be gone into by the Corporation. Whether the construction is according to the plan or in absence of a sanctioned plan, will be decided.

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 proceeding so far initiated and the order dated February 16, 2022 shall be treated as a part of the proceeding to be initiated by this order and the order dated February 16, 2022 shall not be given effect to. The same will merge with the final order that will be passed.

The entire exercise shall be completed within a period of two months from conclusion of the hearing.

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.)