

30.03.2022
Court No. 19
Item no.07
CP

WPA 5015 of 2022

Smt. Anita Dey & ors.
Vs.
Howrah Municipal Corporation & ors.

Mr. Ayan Banerjee
Ms. Debjani Sengupta
.....for the petitioners.

Mr. Sudipto Panda
Mr. Sajal Kumar Pandit
....for the State.

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

The petitioners are aggrieved by a notice of demolition dated March 14, 2022, issued by the Assistant Engineer, Building Department, Howrah Municipal Corporation(hereinafter referred to as 'the corporation'). The ground for challenge is that, apart from the said notice, the petitioners were neither informed during the inspection nor were they heard when the demolition proceedings were concluded. The notice dated March 14, 2022 is a letter addressed to the Deputy Commissioner of Police, Head Quarter – Howrah, praying for deployment of the police force on March 22, 2022 so that the demolition work could be carried out at Premises No. 222/2, Belilious Road, Howrah – 711101. The said letter was issued under the provisions of Section 225

of the Howrah Municipal Corporation Act. A show cause notice has been annexed to the writ petition dated September 7, 2021. It appears that one Hrick Mondal, the developer had been asked to show cause as to why steps shall not be taken for demolition of the concerned premises.

Mr. Ayan Banerjee, learned advocate appearing for the petitioners, submits that neither the petitioners nor the respondent no. 6 were either present during any inspection or heard at the time of disposal of the demolition case. Hence, it is prayed that in the absence of proper inspection and without specifications of the nature and extent of unauthorized construction and without hearing the parties affected by such order, the demolition cannot be proceeded with. The demolition order, if any, which had been passed behind the back of the persons affected by such order, must be set aside and quashed.

Mr. Sandipan Banerjee, learned advocate appearing on behalf of the corporation, hands up a copy of a notice dated December 23, 2021, issued to the developer. He submits that the developer being the person responsible was called for a hearing, but the developer did not attend such hearing. The notice indicates that a G+4 storeyed building has been constructed without a sanction plan.

Mr. Ayan Banerjee submits, on instruction, that the petitioners and the developer had been granted a sanction plan.

In view of the disputed questions of fact and as it is an admitted position that the persons affected were not heard, this court is of the opinion that a de novo proceeding must be initiated by the competent authority of the corporation in accordance with law and the entire issue shall be disposed of in the manner provided below:

- a) An inspection of the site shall be conducted. Such inspection shall be held in the presence of the interested parties, with 48 hours advance notice to the petitioners and the respondent no. 6 as also any other persons interested.
- b) The report of the inspection shall be prepared along with the sketch map indicating the extent of deviation, if any.
- c) Such report shall be handed over to the petitioners as also the respondent No. 6 as also any other persons interested.
- d) A hearing shall be given to the petitioners and the respondent No. 6 as also to any other persons interested. 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.

- e) 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 notice dated March 14, 2022 and also September 7, 2021 are set aside and cancelled. Any decision with regard to such demolition, is also set aside in view of the observation of this court.

It is made clear that status quo with regard to the construction shall be maintained till the disposal of the entire demolition proceeding, as directed herein. If the petitioners file any application for regularization of minor deviations, the same shall be disposed of simultaneously.

This liberty shall not be construed as a decision of the court on the right of regularization. The said issue shall also be considered in accordance with law.

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 question of title, possession and boundary dispute etc. shall not be decided by the corporation. The only question to be decided by the corporation would be whether the construction has been made without any permission and/or in violation of the building rules.

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.)