

30.03.2022
Court No. 19
Item No.4
sn

WPA 5533 of 2022

Md. Makhdoom Reza @ Maqdoom Reza & Anr.
Vs.
State of West Bengal & ors.

Mr. Tanmoy Mukherjee
Mr. Souvik Das
Mr. Rudranil Dasfor the petitioner

Mr. J.L. De
Ms. Smita Das Dey ..for the State

Mr. Sandipan Banerjee
Mr. Ankit Sureka ..for the HMC

The petitioners are aggrieved by an order dated March 10, 2022 passed by the Officer-on- Special Duty and Officer-in-Charge of Borough-II of the Howrah Municipal Corporation, by which the petitioners as also the developers were asked to demolish the structures standing on 36/21, Hara Chand Mukherjee Lane, Howrah, within Ward No.20 of the Howrah Municipal Corporation. It appears that the order was passed pursuant to a direction of this Court, dated September 23, 2021. The decision of this Court was as follows:-

“Under such circumstances, the writ petition is disposed of with a direction upon the competent authority of the Howrah Municipal Corporation to cause an inspection of the premises in question in presence of the parties. Copies of the report of the inspection shall be supplied to the respective parties. A hearing shall be given and a reasoned order shall be passed and communicated to all concerned.

It goes without saying that the Corporation shall act and proceed in accordance with law on the

basis of what transpires at the inspection and at the hearing.

This Court has not gone into the merits of the claims and counter-claims of the parties and the Corporation shall act and proceed in compliance of the statutory provisions.

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

It is also made clear that the Corporation shall implement such interim measures as may be necessary to ensure that further unauthorized construction does not take place.”

It appears that a third party as a complainant, had moved WPA 12312 of 2021. The said writ petition was disposed of in presence of the developers.

The Court finds that the order impugned has been issued on a mis-conception that this Court had directed demolition. The provisions of law, undoubtedly, empowers the Corporation to act and proceed against any unauthorized construction. However, such action can be taken by the Corporation only upon giving an opportunity of hearing to the persons responsible. It also goes without saying, that the rules of natural justice would demand that an inspection be made, the extent and nature of deviation be pointed out to the parties responsible, the parties responsible be allowed to respond to such report, and, thereafter, upon hearing the interested parties as also the complainant, a reasoned order be passed. The

building or a portion thereof, found to be unauthorized, be demolished, in accordance with law.

In this case, the order impugned suffers from material irregularity and error apparent on the face of record. Neither the learned order of this Court, nor the provisions of law have been complied with.

The order impugned is set aside.

The matter is remanded for a de novo proceeding. The complainant, who was before this Court, that is, Smt. Uma Devi prasad, shall be intimated of this order by the Corporation. The complaint of unauthorized construction shall be decided afresh.

While disposing of the issues involved, the competent authority of the Howrah Municipal Corporation shall adhere to the following procedure:-

a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioners, the developers and the complainant-Smt. Uma Devi Prasad, within three weeks. Advance notice of the inspection shall be served upon the petitioners, the developers and Smt. Uma Devi Prasad. If the parties are not available to accept notice, the authorities shall affix the notice 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 the unauthorized construction, if any.

d) Such report shall be handed over to the parties.

e) A hearing shall be given to the petitioners, the developers and Ms. Uma Devi Prasad . 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 either party, will be decided.

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 the issues involved shall be decided independently.

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

This writ petition is, thus, disposed of.

There will be, however, no order as to costs.

All parties are directed to act on the basis of server copy of this order and/or the learned advocate's communication.

(Shampa Sarkar, J.)