

2 5.2022
Court No. 19
Item No.1
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WPA 5551 of 2022

Sanjoy Dutta & Anr.
Vs.
State of West Bengal & ors.

Mr. Aniruddha Chatterjee
Mr. Tanmoy Mukherjee
Mr. Saunak Bhattacharyya
Mr. S. Chakrabortyfor the petitioners

Mr. Manas Kundu ..for the State

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

The petitioners are aggrieved by an order of demolition dated March 2/3, 2022 issued by the Assistant Engineer, In-charge of Building Department, Howrah Municipal Corporation. The allegations are as follows :-

a) The petitioners have not been heard.

b) Necessary inspection for detection of the unauthorized construction was not held in the presence of the parties.

c) The nature and extent of unauthorized construction was not pointed out.

d) The Assistant Engineer, In-charge of Building Department, Howrah Municipal Corporation did not have the authority to pass demolition order.

Mr. Sandipan Banerjee, learned advocate appearing on behalf of the Howrah Municipal

Corporation submits that the petitioners have admitted the fact that there have been unauthorized constructions. That their attendance at the hearing cannot be disputed. He next submits that the Assistant Engineer, In-charge of Building Department, Howrah Municipal Corporation acted as a delegatee of the Commissioner, as per law.

Mr. Kundu, learned advocate for the State respondents also points out to the representation made by the petitioners, from which it appears that the petitioners had admitted that that there have been some unauthorized construction.

This Court finds that the nature and extent of unauthorized construction/deviation with regard to the construction up to G+IV has not been pointed out. On the contrary, the petitioners have been asked to demolish those deviations. It also appears that the 5th floor has been constructed, without any sanction.

In the opinion of the Court, rules of natural justice would demand that an inspection is made and the nature and extent of the deviation is pointed out to the persons responsible. Such persons must be allowed to respond to the inspection report to be prepared in this regard. Thereafter, the authorities would be within their power to take such steps, including steps for demolition, in accordance with law.

Under such circumstances, despite there being an admission, this Court is of the view that the order impugned must be set aside on the following grounds:-

a) Inspection was not made, in the presence of the parties.

b) Report of the inspection was not prepared.

c) The nature and extent of unauthorized construction was not clearly depicted or demarcated, as a result of which the order is cryptic and arbitrary.

With regard to the competence of the Assistant Engineer, In-charge of Building Department, Howrah Municipal Corporation, this Court does not express any view as Mr. Banerjee submits that instead of deciding this issue and keeping the matter pending, the Commissioner be directed to dispose of this issue by holding the hearing after the inspection is carried out by a competent engineer and report of the same is prepared.

The order impugned is set aside. This order shall not amount to obliteration of the admission already made in writing in the representation filed by the petitioners dated March 24, 2022.

The matter is remanded for a de novo hearing. The petitioners, other interested parties/occupants shall be intimated of this order by the Corporation.

The question of unauthorized construction shall be decided afresh.

While disposing of the issue involved, the Municipal Commissioner of the Howrah Municipal Corporation, shall adhere to the following procedure:-

a) An inspection shall be conducted by an authorized engineer. Such inspection shall be held in the presence of the petitioners, other interested parties/occupants. Advance notice of the inspection shall be served upon the petitioners, other interested parties/occupants. 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) The authority 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, other interested parties/occupants, 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. 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.)