

04.04.2022
Sl. No.12
ss

W.P.A. 7540 of 2021

Asit Panja
Vs.
Howrah Municipal Corporation & ors.

Mr. Sanjib Mal
Mrs. Gitashree Mistry
... for the petitioner

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

Mr. Santanu Kr. Mitra
Mr. Gangaprasad Mukherjee
... for the State

Mr. Debjit Mukherjee
Ms. Susmita Chatterjee
Mr. Kaustav Bhattacharya
... for the respondent no.12

The petitioner claims to be a resident in a locality within which the respondent nos.6 to 12 have allegedly made an unauthorised construction. Such unauthorised construction is allegedly made on Dag Nos. 1068, 1072 and 1113 of Mouza:- Ichapur.

Reliance has been placed on an information granted under the Right to Information Act, by the Howrah Municipal Corporation indicating that the alleged construction has been made without any sanction plan.

Mr. Mukherjee, learned Advocate appearing on behalf of the respondent no.12, who is the developer and also the constituted attorney of the respondent nos.6 to 10, in respect of the property in question, submits that the writ petitioner does

not have any locus to move the writ petition. He further submits that the petitioner could not have come before this Court, without first approaching the Corporation. Finally, Mr. Mukherjee has handed over a copy of the sanction plan in order to establish that the construction has been made in accordance with the plan, granted by the Howrah Municipal Corporation. It appears that such sanction was granted on October 17, 2020.

Admittedly, the petitioner is a resident of the locality where such construction is going on. The unauthorised construction not only creates environmental hazards, but affects and destroys the planning of a locality, apart from putting additional burden on the civic amenities provided by the Corporation in the said locality.

Thus, the question of locus is not accepted by this Court. Moreover, the allegation is that the Corporation permitted unauthorised construction and failed in its obligation to discharge its functions under the law, by taking steps against unauthorised construction.

Thus, the petitioner as a citizen and a person affected by such unauthorised construction being a resident of the locality, can move the Court alleging inaction of a statutory body.

However, the other content of Mr. Mukherjee, is accepted by this Court. The Court finds that the petitioner has not filed or lodged any formal complaint with the Corporation. In case, any complaint is filed with the allegation of the unauthorised construction, the Corporation shall act and proceed in accordance with law and reach the proceeding to its logical conclusion. Upon receipt of the complaint, if any, the

competent authority of the Howrah Municipal Corporation, shall adopt the following procedure:-

- a) An inspection of the premises shall be conducted.
Such inspection shall be held in the presence of the petitioners and the respondent nos.6 to 12, within three weeks. Advance notice of the inspection shall be served upon the petitioners and the respondent nos.6 to 12. If the parties are not available to accept notice, the authorities shall affix the notices 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 interim measures by stopping such construction.
- c) A 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) A hearing shall be given to the petitioners and the respondent nos.6 to 12. 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 the parties shall be decided. All

documents filed by the parties, if any, shall be exchanged.

- 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 counter-claims of the parties and the issues involved shall be decided independently. The question of title, boundary dispute and allegation of encroachment, shall not be gone into.

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

With the above observations, this 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.)