

MAT 556 of 2022
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IA NO:CAN/1/2022

Sri Kamal Howladar
Vs.
The Howrah Municipal Corporation & Ors.

Mr. Amitava Paine,
Mr. Noni Gopal Chakraborty ... For the Appellant.

Mr. Sandipan Banerjee,
Mr. Ankit Sureka,
Ms. Kalpita Paul ... For the H.M.C.

Mr. Tilak Mitra ... For the Private Respondent.

By consent of the parties, the appeal and the application are taken up together for hearing.

The writ petitioner/appellant approached the learned Single Judge with a prayer to allow him to continue with the plastering work of his residential building.

It has not been disputed by the learned advocate representing Howrah Municipal Corporation that the appellant had a sanctioned plan on the basis of which he constructed his residential building.

The private respondent has, however, lodged a complaint before the Corporation against the plastering work which was being carried out by the appellant. A notice was issued to the appellant following such complaint, but thereafter, no further steps were taken.

The learned Single Judge, though observed that the notice issued by the Corporation following the complaint made by the private respondent, had died a natural death, reopened the proceedings directing, *inter alia*, as follows:

“ a) An inspection of the premises shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent nos.6 and 7, within three weeks. Advance notice of the inspection shall be served upon the petitioner and the respondent nos.6 and 7. 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 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) A hearing shall be given to the petitioner and the respondent nos.6 and 7. 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, shall 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 question of title, encroachment and disputes with regard to boundary, shall not be gone into by the Corporation.

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

In our view, such direction was uncalled for. The petitioner is entitled to complete the plastering of his residential building since admittedly, he has a sanctioned plan for the building. Therefore, there was no occasion for the learned Single Judge to pass the directions, as quoted above.

Accordingly, we set aside the order of the learned Single Judge insofar as it relates to the direction for fresh inspection and consequential action. However, we clarify that if it is found that there has been any deviation by the writ petitioner in constructing the building, the Corporation will be at liberty to take steps in accordance with law.

MAT 556 of 2022 and I.A. No. CAN 1 of 2022 are, accordingly, disposed of.

Affidavits not having been called for, the allegations in the stay petition shall be deemed not to have been admitted by the respondents.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Kausik Chanda, J.)

(Arijit Banerjee, J.)