

Item No. 10

14.12.2022
Ct-24

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 6933 of 2022
Paran Khatua

v.

The State of West Bengal & Ors.

Mr. Sadananda Ganguli
Mr. Bhaskar Seth
Mr. Purnasis Bhuniya
... for the petitioner.

Mr. Susanta Pal
Ms. Rupsha Chakraborty
... for the State.

Mr. Sandipan Banerjee
Mr. Ankit Sureka
Mr. Sobham Majumder
... for HMC.

The petitioner is aggrieved by the order dated April 12, 2022 passed by the Assistant Engineer, Officer-in-Charge, Borough-1 directing the petitioner to demolish the unauthorized construction at premises no. 11/1/2, Mohinath Porel Lane, Howrah-711106.

The petitioner has averred in the writ petition that in or about the first quarter of the year 2016 the ward committee members of the concerned ward visited his property and made a proposal to the petitioner to convert the tile shed rooms into pacca concrete roof at the cost of the Government. The petitioner accepted the proposal and put his signature on the necessary documents. The cost of construction was credited in the account of the petitioner under the (EWS) Gitanjali Housing Scheme.

The petitioner has further averred that the construction was made under the supervision of the concerned Sub-Assistant Engineer. The persons who undertook the responsibility of the construction were pre-appointed by the ward committee for smooth conduct of the business. The construction was completed in or around the year 2016. After construction the petitioner applied before the Corporation for sanction of as-made plan.

The petitioner has raised an issue with regard to the jurisdiction of the Assistant Engineer in passing the impugned order of demolition.

The issue in question has been decided by the Hon'ble Division Bench in MAT 434 of 2022 with IA No. CAN 1 of 2022, wherein the Hon'ble Division Bench was of the opinion that according to the provisions of the Howrah Municipal Corporation Act, 1980 the Commissioner is empowered to delegate any of its power or function to any other officer or any employee of the Corporation. The Assistant Engineer being a delegatee of the Commissioner has passed the order of demolition and as such there is no jurisdictional error in passing the said order.

The scheme according to which the petitioner allegedly made construction is annexed at page 27 of the writ petition. It mentions that the Government in the department of housing decided to modify the housing scheme for new construction of houses through out the State of West Bengal for economically weaker sections of people who have no pacca house of their own or in the name of any member of their family. The house would be

constructed by beneficiaries themselves and no contracting agency will be engaged for the purpose.

I have perused the scheme. There is no provision mentioned in the said scheme dispensing the formality of obtaining a sanction prior to making construction. The same implies that construction is required to be made in accordance with the relevant municipal laws.

The impugned order mentions that unauthorized construction has been made is more or less 345 sq.ft. at the ground floor level. An opportunity of hearing was given to the petitioner as well as the private respondent being the complainant. Allegation against the petitioner is that construction has been made without leaving the mandatory side open spaces. At the time of hearing it also revealed that the complainant purchased the property after the construction was made by the petitioner herein.

The report of the Sub-Assistant Engineer mentioned that the area of unauthorized construction is more or less 345 sq. ft. The construction is only upto the ground floor level. The Corporation has directed the petitioner to cause self-demolition of the unauthorized construction.

The Assistant Engineer-in-Charge, Borough-1 is directed to cause fresh spot inspection upon giving prior notice to the petitioner as well as the private respondent to ascertain as to whether the manner in which construction has been made by the petitioner is required to be demolished being contrary to the relevant municipal laws.

The spot inspection shall be conducted within a period of four weeks and a decision shall be taken afresh within a period of four weeks thereafter.

The impugned order dated April 11, 2022 shall be kept in abeyance till a fresh decision is taken by the competent officer of the Howrah Municipal Corporation.

The writ petition stands disposed of.

Exception to the report filed by the petitioner and the private respondent in Court are taken on record.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

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(Amrita Sinha, J.)