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07.06.2022
d.p.

W.P.A. 7478 of 2022

**Shri Partho Ghosh
-versus
The Howrah Municipal Corporation & Ors.**

**Mr. P.C. Pal Chowdhury,
Mr. D.N. Mukherjee.
...For the Petitioner.**

**Mr. Ayan Banerjee.
...For the Municipality.**

**Mr. Sandipan Banerjee,
Mr. Ankit Surekha,
Mr. S. Majumder.
...For the Howran Municipal
Corporation.**

Leave is granted to the learned advocate for the petitioner to implead the Bally Municipality and its Administrator as party respondents in the instant writ petition.

Mr. Ayan Banerjee, learned advocate who usually represents the Bally Municipality has been requested to accept service of the writ petition and to defend the Municipality.

The dispute arises in respect of the premises being No. 43/2 Rabindra Sarani, P.S.-Liluah, Howrah-711204, Ward No. 66.

The said premises initially was within the jurisdiction of the Bally Municipality. By virtue of the notification published by the Department of Urban Development Affairs, there was a merger between the

Bally Municipality and the Howrah Municipal Corporation. By virtue of the said merger, the property fell within the jurisdiction of the Howrah Municipal Corporation. Right now, by virtue of the subsequent notification published by the Department of Urban Development and Municipal Affairs dated 12th November, 2021, the property in question is under the jurisdiction of the Bally Municipality.

The issue relates to unauthorized construction being made in the aforesaid premises.

The allegation of unauthorized construction by the private respondent was enquired into by the Howrah Municipal Corporation pursuant to the order passed by this Court on 12th March, 2020 in W.P. No. 32208 (W) of 2014 (Sandhya Ghosh –vs- The State of West Bengal & Ors.) wherein the Court directed the Howrah Municipal Corporation to consider and deal with the representation filed by the petitioner therein (Sandhya Ghosh) after giving an opportunity of hearing to both the parties.

The petitioner is aggrieved by the order dated 17th March, 2022 passed by the Assistant Engineer, Howrah Municipal Corporation wherein the said authority was of the opinion that there is a deviation of 295.98 sq. meters from the sanction plan and order has been passed upon the petitioner to cause self-demolition of the deviated portion within a fortnight from the date of communication of this order. In default, the Howrah Municipal Corporation will be at liberty to cause demolition of the deviated portion.

The petitioner asserts that there has been no deviation in the construction that has been made.

The aforesaid order dated 17th March, 2022 was passed upon giving hearing to the petitioner as well as the complainant.

It appears from the impugned order dated 17th March, 2022 that the area where there has been deviation is mentioned in the order, but the specific portion of the deviation has not been indicated therein. Unless the petitioner is made specifically made aware of the portion where deviation has been made the petitioner will not be in a position to effect demolition of the deviated portion.

In view of the vagueness in the order of demolition that has been passed on 17th March, 2022 the same is liable to be set aside and is accordingly set aside.

As at present all records of the said property has been forwarded and transferred to the Bally Municipality, accordingly, it will be appropriate to direct the Administrator of the Bally Municipality to reconsider the matter afresh after giving fresh opportunity of hearing once again to the petitioner as well as all other necessary parties.

Necessary steps shall be taken in the matter by the Bally Municipality through its Administrator strictly in accordance with law, at the earliest, but positively within a period of ninety days from the date of communication of a copy of this order.

The Bally Municipality shall pass a reasoned order and communicate the same to the parties immediately thereafter.

None appears on behalf of the private respondent despite service.

The writ petition stands disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Amrita Sinha, J.)