

10.05.2022
Court No. 19
Item no.07
CP

WPA No. 7493 of 2022

Pallab Kumar Ata @ Pallab Atta & anr.
Vs.
Howrah Municipal Corporation & ors.

Mr. Srijib Chakraborty
Mr. Shiladitya Barma

....for the petitioners.

Mr. Sounak Bhattacharya
Mr. S. Chakraborty

....for the respondent no. 8.

Mr. Satyam Mukherjee
Ms. Sayani Ahmed

....for the respondent no. 7.

Mr. Sandipan Banerjee
Mr. Ankit Surekha
Ms. K. Paul

....for the H.M.C.

This is one of such cases of unauthorized construction within the jurisdiction of the Howrah Municipal Corporation where floors have been constructed without any sanction. The petitioners claim to be owners of the premises situated at 244/1, Sarat Chatterjee Road, Post Office and Police Station Shibpur, Howrah, Pin – 711102. The respondent no. 8 claims to be one of the developers who is represented by Mr. Sounak Bhattacharya, learned advocate.

The petitioners entered into a development agreement with the firm. Mr. Bhattacharya's client is one of the partners of the said firm. Strangely, the firm has not been impleaded as a party. Normally such development agreements are also accompanied with powers of attorney empowering the developers with all the rights in respect to the land in question including the right to proceed and participate and contest any litigation in respect of the said property which is to be developed. The petitioner ought to have impleaded the firm and the other partners.

Allegation is that this court had directed the corporation to take steps on the basis of the complaint raised by the respondent no. 7 with regard to alleged unauthorized construction on the premises in question.

As the petitioners being the owners were not before this court, and the court had not specifically directed the corporation to hear the petitioners (owners). An appeal was preferred. The appeal court clarified that the petitioners would be heard and prior to such hearing another inspection shall be made in the presence of the petitioners and other parties.

The petitioners allege that despite the order of the appellate court, the corporation did not serve any notice to the petitioners before the inspection. The

petitioners were also not notified about the date of hearing, it is alleged.

The petitioners further allege that the order of demolition was passed on April 12, 2022 without hearing the petitioners, in complete disregard to the order of the Division Bench.

While disposing of the earlier writ petition, this court had directed the corporation to proceed in accordance with law, upon hearing the writ petitioner, the respondent nos. 7 to 10 therein and also all interested parties. The respondent no.7 was the complainant and the respondent nos. 8 to 10 were the other partners of the firm (developers).

Strangely, the corporation held an inspection without notifying the petitioners although this court had directed that all interested parties should be present at the inspection and at the hearing. The appeal court clarified this position and fixed a date of inspection on March 14, 2022 at 2 pm. The appellants were allowed to be present at such inspection and to participate in the demolition proceeding as per the order of the Hon'ble Division Bench. Yet, the order of demolition does not indicate whether the petitioners were present at the hearing, or not.

Mr. Banerjee, learned advocate appearing on behalf of the corporation, submits that non-service of

notice upon the petitioners after the order of the Single Bench might have been a mistake but no further notice of inspection was required to be served as the appellate court had fixed the date and time of the inspection in the order itself.

It is next submitted that the deviations which have been detected cannot be improved upon, even if the petitioners are given further hearing. Thus, it is submitted that the order impugned does not suffer from any illegality.

Mr. Mukherjee, learned advocate appearing on behalf of the complainant/respondent no. 7, submits that the petitioners and the respondent no. 8 have been colluding with each other and trying to linger the demolition proceeding and a totally unauthorized construction is being allowed to stand. That the respondents have been repeatedly approaching the court on one plea or the other. He submits that the order of demolition, even if taken at its face value, would reflect the nature of deviation and further hearing would be an empty formality.

Having heard the learned advocates for the respective parties, this court is of the view that the corporation should have followed the directions of the appellate court. The inspection should have been held in the presence of the parties including the petitioners and other left out partners of the

partnership firm. The reports of such inspection should have been supplied to all concerned and thereafter the petitioners as also the other partners should have been heard by the corporation along with the complainant (respondent no. 7) herein, before the order of demolition was passed.

Mr. Banerjee submits that the direction of the Division Bench was complied with, with regard to the date of inspection. To this, Mr. Chakraborty submits that no inspection was held on the date fixed and thereafter the hearing was concluded without hearing the petitioners.

These disputed question of facts cannot be ascertained by the writ court and in order to dispel all doubts in the minds of the parties, this court directs as follows:

- a) The inspection as directed by the Hon'ble Division Bench shall be held on May 19, 2022 at 12 noon.
- b) The petitioners and the respondent no. 8 shall intimate the other partners of the partnership firm of this order. In the development agreement the respondent no. 8 is one of the partners who is present before the court. Although, the other partners were before the appellate court in the appeal preferred by the petitioners, they

have not been impleaded in the proceedings for reasons best known to the petitioners and, as such, it shall be the liability of the petitioners and the respondent no. 8 to intimate this order to the other partners who may be interested in such construction and proceedings.

- c) A report of such inspection shall be prepared and handed over to all the parties who shall be present during inspection. No further notice will be given to any of the parties. If any of the parties fail to be present during such inspection, the inspection shall be conducted in the absence of such party.
- d) The parties shall file their written version/objection to the report if they deem fit and proper and thereafter a hearing shall be held. The date of the hearing is fixed by this court in order to avoid further allegations of non-service of notice. Let such hearing be held on July 14, 2022 at 12 noon before the municipal commissioner. No further notice need be served on either of the parties by the corporation.
- e) Needless to mention that the commissioner shall hear out the matter on the basis of the

records' report of inspection, the written submissions and the objections filed by the respective parties and also any oral or documentary evidence, that may be adduced by the parties.

f) A reasoned order shall be passed and communicated to all the parties. Such exercise shall be completed within 10 days from conclusion of the hearing.

g) The proceeding shall be reached to its logical conclusion in accordance with law.

The order impugned dated April 12, 2022 is set aside on the ground that the order does not reflect as to whether the petitioners were heard or not.

The writ petition is, thus, disposed of. There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)