

10.05.2022
Court No. 19
Item no.10
CP

WPA No. 8062 of 2022

Sri Kajal Kundu

Vs.

The Howrah Municipal Corporation & ors.

Mr. Tanmoy Mukherjee

Mr. Souvik Das

Mr. Rudranil Das

....for the petitioner.

Mr. Sandipan Banerjee

Mr. Ankit Surekha

Ms. K. Paul

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

The petitioner is the developer who had entered into a development agreement with the owners of the property situated at 13, Sadar Boxi Lane (Danu Bose Lane), Post Station and District – Howrah. The petitioner is aggrieved by the demolition order dated April 27, 2022 passed by the Assistant Engineer in Charge (Building Department), Howrah Municipal Corporation (hereinafter referred to as ‘the corporation’).

It is submitted by Mr. Mukherjee, learned advocate for the petitioner, that the order of demolition does not indicate the nature of deviation upto the G+3 level. He further alleges that the observation of the authority that the unauthorized construction had been admitted, was incorrect.

Specific averments to that effect have been made in the writ petition. He refers to paragraph 10 of the writ petition. His next contention is that a civil court by an order dated October 19, 2020 passed in Title Suit No. 318 of 2020, has restrained the defendants from interfering with and/or creating any obstruction in the matter of raising lawful construction over the suit property. According to him, in view of such finding and specific order of restraint by the learned civil court, the corporation could not have issued the order impugned. The corporation is a defendant in the suit.

Mr. Banerjee, learned advocate appearing on behalf of the corporation, submits that the corporation could not be restrained by the learned civil court from proceeding against any unauthorized construction.

Be that as it may, the contention of Mr. Mukherjee that the order of demolition could not have been passed as the Civil Judge had restrained the defendants from obstructing the lawful construction, is not accepted. The law is well-settled that the civil court does not have any jurisdiction with regard to demolition proceedings initiated under the special law, upon detection of unauthorized construction. The civil court has also specifically recorded that 'lawful construction' of the plaintiffs in

the suit, shall not be either obstructed or disturbed. This court does not find any reason to hold that the corporation had been enjoined from taking steps in accordance with law in order to detect if there are any 'unlawful construction'. The corporation has detected some unauthorized construction.

However, to arrive at such a conclusion, the corporation ought to have held an inspection in the presence of the petitioner, all the other owners who are parties in the suit and other occupants and interested parties, if any. Such inspection shall be held as observed hereinabove, upon notice to all interested parties. As there are many owners in respect of the property in question, the petitioner shall apprise the other plaintiffs with regard to the order of this court.

A copy of the order of this court shall be affixed at a conspicuous place in the premises in question addressed to each of the plaintiffs who are also parties to the development agreement which has been annexed to the writ petition.

Upon completion of the said inspection, a report shall be prepared and supplied to the parties, indicating the nature and extent of the unauthorized construction.

All the parties shall be entitled to file their written versions/objections to the said report and

thereafter a hearing shall be given and necessary orders shall be passed in accordance with law.

It is clarified that the corporation shall be at liberty to take necessary steps in the court below. The hearing so given shall culminate in the passing of a reasoned order which shall be served upon all the parties and thereafter the consequences shall follow in accordance with law.

It is also clarified that the order will clearly show and differentiate the construction which are considered to be lawful by the corporation and which are considered to be unlawful or unauthorized in order to avoid any conflict with the order of injunction.

As the impugned order was not preceded by an inspection and there are disputes with regard to the alleged admission, the same is set aside.

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

This order shall not prejudice the civil suit.

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.)