

18.05.2022
Sl. No.30
srm

W.P.A. No. 8104 of 2022

Md. Sahil Ali

Vs.

The Howrah Municipal Corporation & ors.

Mr. Debjit Mukherjee,
Mr. S. Chatterjee,
Mr. D. Ganguly
Ms. Kaustav Bhattacharyya

....for the Petitioner.

Mr. Sandipan Banerjee,
Mr. Ankit Surekha,
Mr. Sobhan Majumder

.....for the Howrah Municipal Corporation.

Copies of the sanction plan and the 'as made plan',
filed in court today are kept on record.

The petitioner is aggrieved by an order dated April
12, 2022, passed by the Assistant Engineer, Howrah
Municipal Corporation (hereinafter referred to as 'the
Corporation'), Building Department. The petitioner
submits that the order cannot survive, for the following
reasons:

- a) No inspection of the unauthorized construction
was made in presence of the persons
responsible.

- b) The extent of unauthorized construction has not been delineated correctly.
- c) Proper hearing was not given to the persons responsible.
- d) The order is devoid of reasons.
- e) Had the persons responsible been given an opportunity of placing their case before the authority, the persons responsible would have been able to substantiate that the construction was made pursuant to a plan sanctioned by the Corporation.

Mr. Banerjee, learned advocate appearing on behalf of the Corporation, submits that two floors have been constructed without any building plan. He submits that a further inspection or a further hearing cannot improve the case of the petitioner and, as such, relegating the matter back to the Corporation would be an idle formality.

The petitioner has handed over a copy of the sanction plan before this Court in order to substantiate that a G+2 storeyed building had been permitted at holding No.24 Rajani Kanta Sen Lane, Howrah.

Heard the learned advocates for the respective parties.

The Court is of the opinion that the order impugned before this Court issued vide Memo No. 79/AE/Bldg/22-23, dated April 4, 2022 suffers from the following irregularities:

- a) Inspection in the presence of the persons responsible was not held.
- b) Report of the inspection was not supplied to the parties.
- c) The parties were not able to controvert the allegations of unauthorized constructions as no hearing was held.
- d) The order suffers from non-application of mind. The nature and extent of the unauthorized construction upto the G+2 level had not been mentioned.

The merits of the contentions of the parties are not gone into. Undoubtedly, the Corporation has been vested with the powers under the law, to initiate proceedings in case of detection of unauthorized construction can take steps for demolition of the same. However, the law does not permit an authority to perform its statutory functions in violation of the principles of natural justice. The order of

the authority thus fails the test of reason. The order is arbitrary and, hence, set aside.

As there are serious allegations of unauthorized construction, the Municipal Commissioner of the Corporation shall initiate *de novo* proceeding in accordance with law. While doing so, the Corporation shall adhere to the following procedures:

- a) An inspection of the site shall be conducted by an authorized engineer. Such inspection shall be held in the presence of all interested parties, with 48 hours advance notice to the petitioner complainant, if any and all interested parties in the premises in question. The notice shall be affixed in the premises, which shall operate as a notice to all.
- b) The report of the inspection shall be prepared along with the sketch map indicating the extent of deviation, if any.
- c) Such report shall be handed over to the petitioner as also the interested parties.
- d) A hearing shall be given by the Commissioner to the petitioner, complainant, if any, and all other interested parties. 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.

- e) The application for regularization as per the as made plan if filed by the petitioner, the same shall be decided in accordance with law. However, this order shall be not be construed as a decision of the Court on the right of the petitioner for such regularization. Such issue shall be decided as per the provisions of law.
- 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 Court has not gone into the merit of the claims and counterclaims of the parties and the issues shall be decided independently.

As there are findings with regard to unauthorised construction, the petitioner is restrained from raising any further construction and creating third party interest, till the disposal of the matter.

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

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.)