

20.05.2022
Court No. 19
Item no.04
CP

WPA No. 8610 of 2022

Smt. Umrao Bhora & ors.
Vs.
The State of West Bengal & ors.

Mr. Sarwar Jahan
Mr. Jay Chakraborty
Mr. Sandip Dinda
Mr. Maidul Islam Kayal

....for the petitioners.

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

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

Mr. Debjit Mukherjee
Ms. S. Chatterjee

....for the State.

The petitioners have challenged an order dated May 5, 2022 issued by the Assistant Engineer in charge, Building Department, Howrah Municipal Corporation. The petitioner has been asked to remove the unauthorized construction of a C.I. Shed structure on the first floor covering an open terrace. Such construction was made without any permission from the authority.

The grounds of challenge are as follows:

- a) No inspection was held.
- b) Although hearing was granted, the submission of the petitioner was not considered.

c) The order is without reasons.

d) The authority ought to have spelt out the reasons as to why the C.I. Shed structure was considered to be unauthorized and further why the said structure could not be regularized in view of the provisions of law.

Mr. Banerjee, learned advocate appearing for the Howrah Municipal Corporation (hereinafter referred to as 'the corporation'), submits that the order was passed by a competent authority who was delegated the powers by the commissioner. That an inspection was held and a hearing was given. That the installation of a C.I. Shed structure in a busy locality would create hazards to the public at large. That the C.I. Shed structure was in a dangerous position and, as such, unless the same was removed, the persons in the locality would suffer on account of any accident which may occur during a storm or a cyclone. Under such circumstances, the C.I. Shed structure could not be permitted to continue. He further submits that during the rainy season, if any accident takes place, then the petitioners shall be held liable.

The writ petition is admitted on the ground of violation of the principles of natural justice. The court does not find that the contention of the petitioners was at all considered by the competent

authority. Moreover, the reasons as to why the C.I. Shed structure over the terrace could not be permitted to continue, have not been disclosed in the order.

It is not for the court to decide what would be and would not be an unauthorized construction. The authority empowered by law has discretion and also the expertise to decide such question. However, the order impugned does not reflect that the authority at all considered the question as raised by the petitioners and the order has been passed mechanically.

Under such circumstances, the writ petition is disposed of with a direction upon a superior authority, namely, the municipal commissioner of the corporation, to decide the issues as raised in the writ petition by following the procedure, de novo, from the stage of inspection. The method to be followed is stated hereunder:

- a) Inspection of the construction shall be conducted within one week from date by an authorized engineer in the presence of the petitioners, the complainant, if any, and other interested parties, with 48 hours advance notice to the parties. If the parties are not available to accept notice, the same

shall be affixed at a conspicuous place in their respective premises.

- b) During inspection, if any further construction is detected in violation of the rules, then the corporation can take interim measures.
- c) Reports shall be prepared and handed over to the petitioners and the complainant, if any.
- d) Thereafter, a hearing shall be given to the petitioners, the complainant, if any, and all other interested parties. The parties must also be allowed to furnish their written objection/version to the said reports and adduce oral and documentary evidence in support of their contentions, before the competent authority.
- e) 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 with regard to the constructions.

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

The court has not gone into the question of jurisdiction at this stage, as the matter is relegated to the commissioner and the issues shall be decided independently.

The order impugned dated May 5, 2022 is set aside accordingly.

The writ petition is disposed of. However, there will be no order as to costs.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)