

04
21.11.2022
d.p.

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A 10292 of 2022

**Prasanta Ghosh
-versus
The Bidhannagar Municipal Corporation &
Ors.**

**Mr. Sounak Bhattacharya,
Mr. Sounak Mondal.
...For the Petitioner.**

**Mr. Kushal Chatterjee,
Mr. R.C. Manna,
Mr. Debrup Chowdhury.
...For the Private Respondent.**

**Mr. Sirsanya Bandopadhyay,
Mr. Tirthankar Dey,
Mr. Arka Kumar Nag.
...For BMC.**

The petitioner alleges illegal and unauthorized construction at the instance of the private respondent.

The petitioner approached this Court in an earlier occasion with the same allegation. The Court in W.P. 11820 (W) of 2017 in the order dated 27th April, 2017 records the specific stand of the private respondent (Susanta Ghosh) that there was already an existence of a toilet and bathroom, which is being repaired and the allegation of a new construction is unfounded, untrue and incorrect.

The Court observed that once the Municipal Corporation prima facie found the unauthorized and

illegal construction, it was obligatory on their part to take action or steps in this regard.

The fact-finding authority shall certainly see whether there was an existence of such structure and only repairing works was being effected.

The Court directed to the Corporation to take steps and initiate a proceeding in this regard after affording an opportunity of hearing to all the interested parties by recording proper reasons.

In compliance of the direction passed by the Court, the Corporation afforded an opportunity of hearing to both Prasanta Ghosh and Susanta Ghosh and passed order and communicated the same to the parties by communicating letter dated 7th May, 2018.

The order of the Commissioner records that inspection was conducted which prima facie shows illegal construction made by Susanta Ghosh.

Susanta Ghosh could not produce any documents in support of the construction made by him.

The Commissioner of the Corporation invoked the provision of Section 266 of the West Bengal Municipal Act, 2006 and directed Susanta Ghosh to demolish all construction works made beyond the sanctioned plan.

The self-demolition order made it clear that in the event of failure to demolish the unauthorized construction within the stipulated date, demolition work will be undertaken by the Corporation and expenses incurred will be recovered from him.

Prasanta Ghosh filed the present writ petition for implementation of the order of demolition.

According to Susanta Ghosh, the portion of the construction which was held to be illegal, was not specified in the self-demolition order and accordingly, it was not possible for him to identify the portion for effecting demolition.

It has been submitted that the inspection report was not forwarded to him prior to passing the order of demolition and accordingly, there has been violation of principle of natural justice.

The Court passed an order directing the Corporation to file a report in the form of affidavit.

In the said report, the Corporation annexed the inspection report. Copy of the same has been circulated amongst the parties.

It appears therefrom that the inspection was conducted upon notice to both the parties. At the time inspection, it was revealed that recently, one new construction with RCC roof upto the ground floor was constructed by Susanta Ghosh without any valid approved building plan.

Susanta Ghosh constructed single storied building as part of existing building in rear part of the plot without valid approved plan.

The inspection report mentions that there is only one single stair of width only 3' 7" with a single flight. The building may not be fit for running a school with more than 800 students. Fire hazard may cause

dangerous situation. Entire roof has been covered by temporary structure with truss unauthorizedly.

It appears from the inspection report that the details of the unauthorized construction, liable to be demolished, is clearly specified.

Submission of Susanta Ghosh that the unauthorized portion has not been specified does not appear to be correct.

The parties are aware with regard to the portion constructed unauthorizedly without any approved sanction building plan. The unauthorized construction is liable to be demolished.

In the event the unauthorized construction is not demolished within a fortnight, it will be open for the Corporation to take steps for demolishing the same and to recover the cost of demolition from Susanta Ghosh as arrears of property tax.

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.)